

**I. EXECUTIVE ORDERS**  
 KBB 05-08 State Employee Drug Testing Policy ..... 880  
 KBB 05-09 Louisiana Federal Property Assistance Agency ..... 881  
 KBB 05-10 Bond Allocation Louisiana Housing Finance Agency ..... 882

**II. EMERGENCY RULES**  
**Agriculture and Forestry**  
 Office of Agriculture and Environmental Sciences Aerial Applications of 2, 4-D or Products  
 Containing 2, 4-D (LAC 7:XXIII.143) ..... 884  
 Pesticide Restrictions (LAC 7:XXIII.143)..... 885  
 Office of the Commissioner Diseases of Animals Pet Turtles  
 (LAC 7:XXI.2301, 2305, 2311, 2313, and 2321) ..... 886

**Environmental Quality**  
 Office of Environmental Assessment Laboratory Accreditation Exemption for Analyses of Target Volatile  
 Organic Compounds (LAC 33:I.4719)(OS064E) ..... 887  
 Remediation of Sites with Contaminated Media (LAC 33:V.109)(HW084E5)..... 888  
 Waste Tires Amendments (LAC 33:VII.10505, 10509, 10519, 10521, 10535, and 10537)(SW039E2)..... 889

**Health and Hospitals**  
 Board of Veterinary Medicine Veterinary Practice Wellness Clinic (LAC 46:LXXXV.700 and 711) ..... 892  
 Office of the Secretary, Bureau of Health Services Financing Medicaid Eligibility Treatment of Loans,  
 Mortgages, Promissory Notes, and Other Property Agreements ..... 893  
 Professional Services Program Physician Services Supplemental Payment ..... 894

**Revenue**  
 Office of Alcohol and Tobacco Control Self-Service Checkout of Alcohol and Tobacco  
 (LAC 55:VII.201 and 3115) ..... 895

**Social Services**  
 Office of Family Support FITAP, Food Stamp Program, and KCSP Combat Pay  
 (LAC 67:III.1229, 1980, and 5329) ..... 896

**Wildlife and Fisheries**  
 Wildlife and Fisheries Commission Oyster Season Closure North of the Mississippi River  
 Gulf Outlet (MRGO)..... 897  
 Shrimping Season Partial Opening of State Outside Waters ..... 897

**III. RULES**  
**Agriculture and Forestry**  
 Electing One Soil and Water Conservation District Supervisor (LAC 7:XLI.101) ..... 898

**Civil Service**  
 Board of Ethics Ethics Lobbying Expenditure Report (LAC 52:I.1908)..... 899

**Economic Development**  
 Office of Business Development, Louisiana Economic Development Corporation Economic Development  
 Award Program (EDAP) and Economic Development Loan Program (EDLOP)(LAC 13:III.Chapter 1) ..... 902

**Education**  
 Board of Elementary and Secondary Education Bulletin 111 Louisiana School, District, and State  
 Accountability System (LAC 28:LXXXIII.703, 4307, and 4310) ..... 912  
 Bulletin 1530 Louisiana's IEP Handbook for Students with Disabilities  
 (LAC 28:XCVII.305, 307, 311 and 501) ..... 913  
 Bulletin 1872 Extended School Year Program Handbook (LAC 28:LVII.Chapters 3 and 5)..... 915  
 Textbook Adoption Standards and Procedures (LAC 28:I.919) ..... 917

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**Environmental Quality**

Office of Environmental Assessment **C** Designated Uses and Criteria for Cypress Island Coulee Wetland (LAC 33:IX.1123)(WQ059) ..... 917  
Incorporation by Reference **C** 2004 (LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517) (OS062\*) ..... 918  
Numerical Criterion of Sulfates for Bayou Anacoco Subsegment 110507 (LAC 33:IX.1123)(WQ058) ..... 920

**Governor**

Motor Vehicle Commission **C** Motor Vehicle Sales Finance (LAC 46:V.Chapters 71-79) ..... 921

**Health and Hospitals**

Board of Dentistry **C** Dentists, Dental Assistants/Hygienists, and Anesthesia/Analgesia Administration (LAC 46:XXXIII.304, 306, 507, 703, and 1515) ..... 927  
Board of Veterinary Medicine **C** Professional Conduct; Partnerships, Corporations, and Limited Liability Companies (LAC 46:LXXXV.1015) ..... 928  
Registered Equine Dentists (LAC 46:LXXXV.1515) ..... 930  
Office of the Secretary, Bureau of Health Services Financing **C** Pharmacy Benefits Management Program **C** Narcotics and Controlled Substances ..... 931  
Professional Services Program **C** Circumcisions **C** Termination of Reimbursement ..... 931  
Professional Services Program **C** Physician Services **C** Reimbursement Increase ..... 931

**Insurance**

Office of the Commissioner **C** Regulation 79 **C** Limited Licensing for Motor Vehicle Rental Companies (LAC 37:XIII.Chapter 103) ..... 932

**Natural Resources**

Office of the Secretary **C** Louisiana Home Energy Rater Training and Certification (LAC 43:I.1921 and 1923) ..... 934

**Public Safety and Corrections**

Corrections Services **C** Nepotism; Student and Inmate Labor; Work Release; Classification and Reclassification Board (LAC 22:I.209, 301, 309, and 311) ..... 937  
Release, Placement and Transfer of Offenders; Medical Parole; Visitation; Contraband (LAC 22:I.306, 307, 310, 319, 327, and 331) ..... 937  
Office of State Police **C** Ignition Interlock Devices (LAC 55:I.615) ..... 938

**Revenue**

Office of Alcohol and Tobacco Control **C** Responsible Vendor Program (LAC 55:VII.503-511) ..... 938

**Transportation and Development**

Compilation of Public Works (LAC 56:I and III) ..... 942  
Office of Highways/Engineering **C** Control of Outdoor Advertising (LAC 70:III.Chapter 1) ..... 944

**Treasury**

Board of Trustees of the Louisiana State Employees' Retirement System **C** DROP Interest (LAC 58:I.2715) ..... 946  
Trustee Candidate Nominating Petitions (LAC 58:I.303 and 503) ..... 946

**Wildlife and Fisheries**

Wildlife and Fisheries Commission **C** Freshwater Shrimp Commercial Harvest (LAC 76:VII.102 and 701) ..... 947  
Toledo Bend Reciprocal Agreement (LAC 76:VII.110) ..... 948

**IV. NOTICES OF INTENT**

**Agriculture and Forestry**

Livestock Sanitary Board **C** Scrapie in Sheep and Goats (LAC 7:XXI.1105 and 1303) ..... 949

**Education**

Board of Elementary and Secondary Education **C** Bulletin 746 **C** Ancillary School Librarian Certification (LAC 28:I.903) ..... 950  
Bulletin 1196 **C** Louisiana Food and Nutrition Programs, Policies of Operation (LAC 28:XLIX.335, 337, 343 and 737) ..... 951  
Bulletin 1566 **C** Guidelines for Pupil Progression **C** High Stakes Testing Policy (LAC 28:XXXIX.503, 905, 911, 1101, 1301 and 1501) ..... 952

**Environmental Quality**

Office of Environmental Assessment **C** Cleanup Package (LAC 33:I.4503, 4705; III.5151; V.529, 1109, 1115, 1117, 1705, 1907, 1917, 3023, 3711, 3719, 4037, 4901; VII:115, 721; IX.2505; XI.103, 1121, 1139) (OS063) ..... 959  
Postponement of Permit Deadline for Oil and Gas Construction Activities (LAC 33:IX.2511)(WQ060ft) ..... 967

**Governor**

Division of Administration, Board of Home Inspectors **C** Home Inspectors Training (LAC 46:XL.120) ..... 968  
Division of Administration, Office of Group Benefits **C** National Guard (LAC 32:I.1501-1515) ..... 969  
Division of Administration, Office of State Lands **C** Receipt of Donation of Immovable Property (LAC 43:XXVII.3201-3204) ..... 971  
Division of Administration, Racing Commission **C** Corrupt and Prohibited Practices **C** Human Recombinant Erythropoietin and/or Darbepoietin (LAC 35:I.1716) ..... 974  
Purses from Video Poker (LAC 35:III.5736) ..... 974  
Vesting of Title; Tests (LAC 35:XI.9913) ..... 975

**Health and Hospitals**

Board of Medical Examiners **C**Occupational Therapy **C**Continuing Professional Education  
(LAC 46:XLV.1967, 1969 and 1971)..... 976

Board of Nursing **C**Disciplinary Proceedings; Alternative to Disciplinary Proceedings  
(LAC 46:XLVII.3403-3411, 3419)..... 977

Board of Practical Nursing Examiners **C**Program Closure and Reapplication (LAC 46:XLVII.701, 1503) ..... 980

Office of Public Health **C**Lead Poisoning Prevention Program (LAC 48:V.7005, 7007, and 7009) ..... 981

Office of the Secretary, Bureau of Health Services Financing **C**Adult Dentures (LAC 50:XXV.Chapters 1-7)..... 983

Home Health Program (LAC 50:XIII.Chapters 1-7 and 101-129) ..... 984

Pharmacy Benefits Management Program **C**Reimbursement Methodology ..... 1004

Prosthetics and Orthotics (LAC 50:XVII.Chapters 1, 3, 5, 15, 17, 19, 101, and 103)..... 1007

**Natural Resources**

Office of Conservation **C**Statewide Order 2-B **C**Hours for Receiving Waste (LAC 43:XIX.537)..... 1009

**Public Safety and Corrections**

Board of Private Security Examiners **C**Licensure and Training  
(LAC 46:LIX.201, 203, 301, 405, 409, and 813) ..... 1010

**Revenue**

Office of Alcohol and Tobacco Control **C**Tobacco Permits **C**Importation of Tobacco (LAC 55:VII.3115) ..... 1011

**Social Services**

Office of Family Support **C**TANF Initiatives **C**Earned Income Tax Credit (EITC) Program (LAC 67:III.5581) ..... 1013

**Treasury**

State Employees' Retirement System **C**Waiver of Electronic Funds Transfer (LAC 58:I.109) ..... 1014

**Wildlife and Fisheries**

Wildlife and Fisheries Commission **C**Snake Possession Permits (LAC 76:XV.101) ..... 1015

**V. COMMITTEE REPORTS**

**Senate**

Committee on Agriculture, Forestry, Aquaculture and Rural Development **C**Petroleum Products  
(LAC 7:XXXV.351-365)..... 1017

**VI. LEGISLATION**

**State Legislature**

House Concurrent Resolution Number 56 of the 2004 Regular Session by Representative  
Faucheux **C**Continuing Education Requirements (LAC 46:XXXVII.709) ..... 1018

**VII. ADMINISTRATIVE CODE UPDATE**

Cumulative **C**January 2005 through March 2005 ..... 1019

**VIII. POTPOURRI**

**Agriculture and Forestry**

Horticulture Commission **C**Annual Quarantine Listing **C**2005 ..... 1021

**Civil Service**

Board of Ethics **C**Public Hearing **C**Proposed Changes to Rules Concerning the Executive Branch  
Lobbying Disclosure Law (LAC 52:I.101, 301, 1204, 1901, 2114, 2115, 2119, and 2123) ..... 1022

**Environmental Quality**

Office of Environmental Assessment **C**Advance Notice of Proposed Rulemaking and Solicitation of  
Comments on Abrasive Blasting Regulations (LAC 33:III.Chapter 13.Subchapter F)(AQ249) ..... 1025

Notification of Application Period for Louisiana Targeted Brownfields Assessment Services ..... 1028

**Governor**

Office of Elderly Affairs **C**Hearing Notice Correction **C**Family Caregiver Support Program (LAC 4:VII.1101,  
1105, 1237, 1245, and 1275)..... 1029

**Revenue**

Policy Services Division **C**Natural Gas Severance Tax Rate ..... 1029

**Social Services**

Office of Community Services **C**Louisiana's Child and Family Services Plan and  
Annual Progress and Services Report ..... 1029

**VI. INDEX** ..... 1031

# Executive Orders

## EXECUTIVE ORDER KBB 05-08

### State Employee Drug Testing Policy

WHEREAS, the Office of the Governor and the state of Louisiana have a long-standing commitment to working toward a drug-free Louisiana;

WHEREAS, the employees of the state of Louisiana are among the state's most valuable resources, and the physical and mental well-being of these employees is necessary for them to properly carry out their responsibilities;

WHEREAS, substance abuse causes serious adverse consequences to users, impacting on their productivity, health and safety, dependents, and co-workers, as well as the general public;

WHEREAS, to curb the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees; and

WHEREAS, the citizens of the state of Louisiana would best be served by a statewide policy on rules and procedures for drug testing state employees;

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

#### SECTION 1:

A. All executive departments and all other agencies, boards, commissions, and entities of state government in the executive branch over which the governor has appointing authority or, as chief executive officer of the state, has general executive authority, which are not authorized by the Louisiana Constitution of 1974, as amended, or legislative act to manage and supervise their own system, (hereafter "executive agency") shall promulgate a written policy which mandates drug testing of employees, appointees, prospective employees, and prospective appointees, pursuant to R.S. 49:1001 et seq., as set forth in this Order.

B. All executive departments which operate under the authority of another statewide elected official or which are authorized by the Louisiana Constitution of 1974, as amended, or legislative act to manage and supervise its own system, (hereafter "executive agency") are requested to promulgate a written policy which mandates drug testing of employees, appointees, prospective employees, and prospective appointees pursuant to R.S. 49:1001, et seq., as set forth in this Order.

#### SECTION 2:

A. The appointing authority of each executive agency shall duly promulgate a written policy in compliance with R.S. 49:1001 et seq., which at a minimum mandates drug testing of an employee or appointee (hereafter "employee") or a prospective employee or prospective appointee (hereafter "prospective employee") as follows:

1. when individualized, reasonable suspicion exists of an employee's drug use;

2. following an accident that occurs during the course and scope of an employee's employment that:

a) involves circumstances leading to a reasonable suspicion of the employee's drug use;

b) results in a fatality; or

c) results in or causes the release of hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5);

3. randomly, as a part of a monitoring program established by the executive agency to assure compliance with terms of a rehabilitation agreement;

4. prior to hiring or appointing a prospective employee, except employees transferring from one executive agency to another without a lapse in service;

5. prior to promoting an employee to a safety-sensitive or security-sensitive position or to a higher safety-sensitive or security-sensitive position; and

6. randomly, for all employees in safety-sensitive or security-sensitive positions.

B. The appointing authority of each executive agency shall determine which positions within their agency, if any, are "safety-sensitive or security-sensitive positions," by considering statutory law, jurisprudence, the practices of the executive agency, and the following non-exclusive list of examples of safety-sensitive and/or security-sensitive positions:

1. positions with duties that may require or authorize the safety inspection of a structure;

2. positions with duties that may require or authorize access to a prison or an incarcerated individual;

3. positions with duties that may require or authorize carrying a firearm;

4. positions with duties that may allow access to controlled substances (drugs);

5. positions with duties that may require or authorize inspecting, handling, or transporting hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5);

6. positions with duties that may require or authorize any responsibility over power plant equipment;

7. positions with duties that may require instructing or supervising any person to operate or maintain, or that may require or authorize operating or maintaining, any heavy equipment or machinery; and

8. positions with duties that may require or authorize the operation or maintenance of a public vehicle, or the supervision of such an employee.

C. Prior to the appointing authority of an executive agency promulgating its drug testing policy regarding safety-sensitive and/or security-sensitive positions, the appointing authority shall consult with the Louisiana Department of Justice.

#### SECTION 3:

A. No drug testing of an employee or a prospective employee shall occur in the absence of a duly promulgated written policy which is in full compliance with the provisions of R.S. 49:1001, et seq.

**EXECUTIVE ORDER KBB 05-09**

Louisiana Federal Property Assistance Agency

B. Any employee drug testing program in existence on the effective date of this Order shall not be supplanted by the provisions of this Order, but shall be supplemented, where approximate, in accordance with the provisions of this Order and R.S. 49:1001, et seq.

SECTION 4: All information, interviews, reports, statements, memoranda, and/or test results received by the executive agency through its drug testing program are confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant.

SECTION 5:

A. Pursuant to R.S. 49:1011, an executive agency may, but is not required to, afford an employee whose drug test result is certified positive by the medical review officer, the opportunity to undergo rehabilitation without termination of employment.

B. Pursuant to R.S. 49:1008, if a prospective employee tests positive for the presence of drugs in the initial drug screening, the positive drug test result shall be the cause of the prospective employee's elimination from consideration for employment or appointment.

SECTION 6: Each executive agency shall procure employee drug testing services through the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws.

SECTION 7: Each executive agency shall submit to the Office of the Governor, through the Commissioner of Administration, a report on its written policy and drug testing programs, describing the progress of its programs, the number of employees affected by the programs, the categories of testing being conducted, the associated costs of testing, and the effectiveness of the programs, by December 1, 2005. Each executive agency shall annually update its report by December 1.

SECTION 8: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed (or requested pursuant to Subsection 1B) to cooperate with the implementation of the provisions in this Order.

SECTION 9: 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 18th day of March, 2005.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0504#060

WHEREAS, Public Law 94-519, enacted on October 17, 1976, amended the Federal Property and Administrative Act of 1949, 40 U.S.C. 484., et seq., to permit the donation of federal surplus personal property to the states, local government, eligible 501(c)(3) not-for-profit organizations, Small Business Administration 8A program participants, for public purposes, and for other purposes;

WHEREAS, the U.S. General Services Administration within the executive branch of the United States Government is the designated federal agency which allocates the surplus property among the states in a fair and equitable manner, pursuant to criteria, which are based on need and utilization;

WHEREAS, after the Administrator of U.S. General Services Administration transfers the surplus property to a designated state agency, the property is distributed by the state agency:

1) to public agencies for carrying out or promoting one or more public purposes, which includes but are not limited to, conservation, economic development, education, parks and recreation, public health and public safety;

2) to nonprofit educational or public health institutions or organizations, including medical institutions, hospitals, health clinics, schools, colleges, universities, schools for the mentally retarded or physically handicapped, child care centers, and certain radio and television stations; and

3) Small Business Administration 8A program participants;

WHEREAS, before any property may be transferred to a state agency by the administrator of the U.S. General Services Administration, the state shall develop, according to state law, a detailed plan of operation, developed in conformity with federal law, which includes adequate assurance for the federal government that the state agency has the "necessary organizational and operational authority and capability, including staff, facilities, means and methods of financing, and procedures with respect to: accountability, internal and external audits, cooperative agreements, compliance and utilization reviews, equitable distribution and property disposal, determination of eligibility, and assistance through consultation with advisory bodies and public and private groups";

WHEREAS, a permanent, revised plan of operation must be submitted to the administrator of the U.S. General Services Administration for approval in order that the state and/or state program may continue to qualify under Public Law 94-519;

WHEREAS, in addition to the federal surplus personal property that may be transferred to the states pursuant to the Federal Property and Administrative Act of 1949, as amended, under 10 U.S.C. 2576 a, added by Public Law 104-181, the secretary of Defense may also transfer to federal and state agencies the personal property of the Department of Defense, including small arms and ammunition, which the Secretary of Defense determines is

excess to the needs of the Department of Defense, but suitable for use by state and federal agencies in law enforcement activities, such as counter-drug and counter-terrorism actions; and

WHEREAS, the U.S. General Services Administration (GSA Fleet Management) within the executive branch of the United States Government, is the designated federal agency which allows the sale of federal fleet turn-in vehicles to state government. Authority is granted under the Code of Federal Regulations: 41CFR 101-45.304-12. These vehicles will be resold to state and local government organizations, eligible 501(c)(3) not-for-profit organizations, and Small Business Administration 8A program participants for public and other purposes;

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

SECTION 1: The Federal Property Assistance Program is hereby renamed the Louisiana Federal Property Assistance Agency (hereafter "Agency").

SECTION 2: The Agency shall submit a revised Plan of Operation to the administrator of the U.S. General Services Administration for approval so that the state and/or public agencies of the state of Louisiana may participate or continue to participate as donees under the Federal Property and Administrative Services Act of 1949, as amended.

SECTION 3: The Agency shall be responsible for carrying out the provisions of the Plan of Operation, as approved by the administrator of the U.S. General Services Administration, and the fixed price vehicle resale program, as prescribed by the GSA Fleet Management within the executive branch of the United States Government.

SECTION 4: The Agency shall be responsible for carrying out the provisions of the Plan of Operation, as approved by the administrator of the U.S. General Services Administration, and the counter-drug program, counter-terrorism and law enforcement activities, as prescribed by the secretary of Defense.

SECTION 5: The Agency shall be a unit within the Office of General Services, a section of the Division of Administration, within the executive branch, Office of the Governor. The agency assistant director shall report to the commissioner of administration, through the director of the Agency.

SECTION 6: The director of the Agency, acting through the agency assistant director, shall possess all power and authority necessary to exercise and perform all the functions, duties, and responsibilities cited in the revised Plan of Operation, so as to comply with all applicable state and federal laws and regulations.

SECTION 7: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Agency in implementing the provisions of this Order.

SECTION 8: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 28th day of March, 2005.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0504#061

**EXECUTIVE ORDER KBB 05-10**

**Bond Allocation Louisiana Housing Finance Agency**

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 2004-21 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 2005 (hereafter "the 2005 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2005 Ceiling; and

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

WHEREAS, the Louisiana Housing Finance Agency has requested an allocation from the 2005 Ceiling to finance the acquisition and construction of a multi-family residential complex for low to moderate income residents located at 2700 South Beglis Parkway, city of Sulphur, parish of Calcasieu, 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 2005 Ceiling in the amount shown.

Amount of Allocation	Name of Issuer	Name of Project
\$4,760,000	Louisiana Housing Finance Agency	PepperMill Limited Partnership I & II

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 23, 2005, provided that such bonds are delivered to the initial purchasers thereof on or before June 24, 2005.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the allocation granted herein was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: 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 28th day of March, 2005.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0504#062

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

#### Aerial Applications of 2, 4-D or Products Containing 2, 4-D (LAC 7:XXIII.143)

In accordance with the Administrative Procedure Act R.S. 49:950(B) and R.S. 3:3202(A), the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in amending the following Rule for the implementation of regulations governing the use of the pesticide 2, 4-D and products containing 2, 4-D.

The applications of 2, 4-D in certain parishes, in accordance with the current regulations and labels, have not been sufficient to control drift onto non-target areas. Failure to prevent the drift onto non-target areas will adversely affect other crops particularly cotton. The adverse effects to the cotton crop and other non-target crops will cause irreparable harm to the economy of Central Louisiana and to Louisiana Agricultural producers.

The department has, therefore, determined that this Emergency Rule implementing further restrictions on the application of 2, 4-D, and products containing 2, 4-D, during the current crop year, is necessary in order to alleviate these perils.

This Rule becomes effective on April 1, 2005 and will remain in effect 120 days.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticide

#### Chapter 1. Advisory Commission on Pesticides Subchapter I. Regulations Governing Application of Pesticides

#### §143. Restrictions on Application of Certain Pesticides

A. - O. ...

P. Regulations Governing Aerial Applications of 2, 4-D or Products Containing 2, 4-D

##### 1. Registration Requirements

a. The commissioner hereby declares that prior to making any commercial aerial or ground application of 2, 4-D or products containing 2, 4-D, as described in LAC 7:XXIII.143.P.3.a.i, the owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs ("DPEP") in writing.

b. The commissioner hereby declares that all permits and written authorizations of applications of 2, 4-D or products containing 2, 4-D in the areas listed in LAC 7:XXIII.143.P.3.a.i., shall be a part of the record keeping requirements, and be in the possession of the owner/operator prior to application.

2. Grower Liability. Growers of crops shall not force or coerce applicators to apply 2, 4-D or products containing 2, 4-D to their crops when the applicators, conforming to the Louisiana Pesticide Law and rules and regulations or to the

pesticide label, deem it unsafe to make such applications. Growers found to be in violation of this section shall forfeit their right to use 2, 4-D or products containing 2, 4-D on their crops, subject to appeal to the Advisory Commission on Pesticides.

3. 2, 4-D or Products containing 2, 4-D; Application Restriction

a. Aerial application of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between April 3 and May 1 in the following parishes:

i. Allen (East of U.S. Highway 165 and North of U.S. Highway 190), Avoyelles (West of LA Highway 1), Evangeline, Pointe Coupee (West of LA Highway 1 and North of U.S. Highway 190), Rapides, and St. Landry (North of U.S. Highway 190);

ii. applications of 2, 4-D, or products containing 2, 4-D, shall not be made in any manner by any commercial or private applicators between May 1 and August 1 in the areas listed in LAC 7:XXIII.143.P.3.a.i., except commercial applications of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between May 1 and August 1 in the area south of LA Highway 104 and LA Highway 26 and north of U.S. Highway 190 between U.S. Highway 165 and LA. Highway 13 in the parishes of Allen and Evangeline, and except upon written application to and the specific written authorization by the Assistant Commissioner of the Office of Agricultural and Environmental Sciences, or in his absence the Commissioner of Agriculture and Forestry.

4. Procedures for Permitting Applications of 2, 4-D or Products Containing 2, 4-D.

a. Prior to any application of 2, 4-D, or products containing 2, 4-D, a permit shall be obtained in writing from the Louisiana Department of Agriculture and Forestry. Such permits may contain limited conditions of applications and shall be good for five days from the date issued. Growers or commercial ground or aerial applicators shall obtain permits from the Director of Pesticides and Environmental Programs (DPEP). Commercial ground and aerial applicators shall fax daily to DPEP all permitted or written authorized applications of 2, 4-D or products containing 2, 4-D. The faxed information shall include but not be limited to the following:

- i. wind speed and direction at time of application;
- ii. temperature at time of application;
- iii. field location and quantity of acreage;
- iv. time of application;
- v. grower name, address and phone number;
- vi. owner/operator firm name, address and phone number;
- vii. applicator name, address, phone number and certification number;
- viii. product name and EPA registration number;
- ix. any other relevant information.



b. The determination as to whether a permit for application is to be given shall be based on criteria including but not limited to:

- i. weather patterns and predictions;
- ii. wind speed and direction;
- iii. propensity for drift;
- iv. distance to susceptible crops;
- v. quantity of acreage to be treated;
- vi. extent and presence of vegetation in the buffer zone;
- vii. any other relevant data.

5. Monitoring of 2, 4-D or Products containing 2, 4-D  
 a. Growers or owner/operators shall apply to the DPEP, on forms prescribed by the commissioner, all requests for aerial applications of 2, 4-D or products containing 2, 4-D.

b. All owner/operators and private applicators shall maintain a record of 2, 4-D or products containing 2, 4-D applications.

6. Determination of Appropriate Action

a. Upon determination by the commissioner that a threat or reasonable expectation of a threat to human health or to the environment exists, he may consider:

- i. stop orders for use, sales, or application;
- ii. label changes;
- iii. remedial or protective orders;
- iv. any other relevant remedies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 31:

Bob Odom  
 Commissioner

0504#017

**DECLARATION OF EMERGENCY**

**Department of Agriculture and Forestry  
 Office of Agricultural and Environmental Sciences**

**Pesticide Restrictions (LAC 7:XXIII.143)**

In accordance with the Administrative Procedure Act, R.S. 49:953(B) and R.S. 3:3203(A), the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in adopting the following Rule governing the application of certain pesticides in certain parishes.

Currently LAC 7:XXIII.143.C prohibits the application of certain pesticides by commercial applicators between March 15 and September 15 in the parishes in Subsection C. Due to current weather and crop conditions the time frame for application of these pesticides needs to be extended from

April 1, 2005 to September 15, 2005 to insure that farmland can be economically and properly prepared for crop planting. If the farmland cannot be properly prepared crops cannot be planted and subsequently harvested. Louisiana agriculture has been hit by adverse weather conditions for the last four years causing a severe adverse economic impact on Louisiana's economy. An inability to properly and timely plant crops this year will devastate Louisiana agriculture and Louisiana's economy

Therefore, the Commissioner of Agriculture and Forestry has determined that failure to extend the time frame for application of these pesticides in the parishes listed constitutes an imminent peril to the health, safety and welfare of the Louisiana agricultural community, the citizens of Louisiana and the economy of Louisiana.

This Rule becomes effective upon signature, March 16, 2005, and will expire at 12:01 a.m. on September 15, 2005.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXIII. Pesticides**

**Chapter 1. Advisory Commission on Pesticides**

**Subchapter I. Regulations Governing Applications of Pesticides**

**§143. Restrictions on Application of Certain Pesticides**

A. - B. ...

C. The pesticides listed in §143.B shall not be applied by commercial applicators between March 31, 2005 and September 15, 2005 in the parishes listed below.

1. Avoyelles	15. Madison
2. Bossier	16. Morehouse
3. Caddo	17. Natchitoches
4. Caldwell	18. Ouachita
5. Catahoula	21. Red River
6. Claiborne, Ward 4	22. Richland
7. Concordia	23. St. Landry
8. DeSoto, Ward 7	24. St. Martin, Ward 5
9. East Carroll	25. Tensas
10. Evangeline Wards 1, 3 and 5	26. Union
11. Franklin	27. West Carroll
	28. West Baton Rouge Wards 5, 6, and 7
12. Grant	
13. Iberville Ward 9	29. Winn, Ward 7
14. LaSalle	

D. - P.6.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 31:

Bob Odom  
 Commissioner

0504#003

# DECLARATION OF EMERGENCY

## Department of Agriculture and Forestry Office of the Commissioner

Diseases of Animals **C** Pet Turtles  
(LAC 7:XXI.2301, 2305, 2311, 2313, and 2321)

The Commissioner of Agriculture and Forestry hereby adopts the following emergency amendments to rules governing the treatment and testing of pet turtles and eggs. These emergency regulations are being adopted in accordance with R.S. 3:2378.2(A) and R.S. 49:953(B).

The Louisiana pet turtle industry produces and sells over 10 million turtles annually, thereby bringing an estimated \$9-12 million annually into Louisiana's economy. Louisiana's pet turtle industry depends on sales of pet turtles in foreign markets because the United States Food and Drug Administration (USDA) has banned the sale of pet turtles in the United States. The sale of pet turtles in the U.S. is banned because of the bacteria *Salmonella*. Although *Salmonella* can be successfully suppressed by the use of antibiotics USDA is concerned that the sale of pet turtles treated with antibiotics will increase the risk of the bacteria developing a resistance to current antibiotics. USDA will not consider lifting the ban on the sale of pet turtles in the U.S. until pet turtles can be successfully treated for *Salmonella* with a non-antibiotic product.

Researchers at Louisiana State University have developed a non-antibiotic effective in killing *Salmonella* in pet turtles. The immediate use of this non-antibiotic in treating pet turtles is necessary to help control cost and to develop scientific data to present to USDA. Time is of the essence because of the volatility of the current foreign markets for pet turtles.

Louisiana's pet turtle industry is currently suffering severe financial distress as a result of a 50 percent decline in the price of pet turtles since 2003. Louisiana's pet turtle industry has been able to maintain a market for pet turtles because some foreign countries are importing pet turtles to be raised and harvested for food. These countries are not requiring the pet turtles to be tested for *Salmonella*. Testing for *Salmonella* is expensive, with each test costing approximately \$280. Since the average lot of pet turtles tested annually is approximately 5,000, the annual cost of *Salmonella* testing to Louisiana pet turtle farmers is \$1,400,000. The cost of these tests cannot be passed on to the purchasers of pet turtles because of the rapid decline in prices.

Current regulations require all pet turtles and eggs to be tested for *Salmonella*. The continued imposition of mandatory testing for *Salmonella* when such testing is not necessary imposes a severe financial burden on Louisiana's pet turtle industry that directly affects the profitability of the industry; which profitability is necessary to the continuation of the industry.

The pet turtle industry in Louisiana is a vital part of Louisiana's economic base. There is an imminent peril that further financial deterioration will destroy Louisiana's pet turtle industry, thereby substantially endangering or impairing the public welfare. Immediate action to allow the use of a non-antibiotic to treat pet turtles and eggs and to avoid the financial burden of unnecessary testing is essential

in the effort to maintain Louisiana's pet turtle industry and the economic benefits the industry provides to the citizens of this state.

The Commissioner of Agriculture and Forestry has, therefore, determined that the Emergency Rule is necessary in order to immediately allow pet turtle farmers to use a non-antibiotic treatment and to avoid the financial burden of unnecessary testing.

This Rule becomes effective upon signature, April 1, 2005, and will remain in effect 120 days, unless renewed by the Commissioner of Agriculture and Forestry or until permanent rules are promulgated in accordance with law.

### Title 7

## AGRICULTURE AND ANIMALS

### Part XXI. Diseases of Animals

#### Chapter 23. Pet Turtles

##### §2301. Definitions

A. In addition to the definitions listed below, the definitions in R.S. 3:2358.3 shall apply to these regulations.

\*\*\*

*Baquacil/Vantacil* **Ca** chemical product classified as a polyhexamethyldme biguamide dissolved in water to give a concentration of 50ppm or a concentration as approved by the department.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), amended by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1567 (August 2000), LR 31:

##### §2305. Collection of Egg and Turtle Samples

A. In order to ensure a representative sample from the turtle group and to prevent cross-contamination the following procedures shall be followed.

1. Licensed turtle farmers shall inform the department in a timely manner of their intention to ship turtle hatchlings or eggs to arrange certification procedures.

2. Upon notification by the farmer, a department employed veterinarian shall inspect the group of turtles or turtle eggs bound for shipment for visible signs of infections, contagious or communicable diseases. The veterinarian or designee shall randomly select turtles or eggs for submission to a certified laboratory for microbiological examination unless the turtles to be shipped are food turtles in which case the random selection of turtles and submission to a certified laboratory may be omitted.

3. - 4. ...

5. The transportation to a certified laboratory for microbiological examination and handling of the samples of turtles and eggs shall be performed in such a manner as to maintain identity and integrity.

6. - 6.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9, 3:2358.10 and 3:2358.12.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), amended by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1568 (August 2000), LR 31:

**§2311. Microbiological Test Procedures**

A. - C. ...

D. All pet turtles that are on turtle farms operated by licensed turtle farmers shall originate from eggs that are produced on turtle farms operated by licensed pet turtle farmers and have been subjected to the egg immersion method of treatment. All turtles, other than those designated and shipped as food turtles, shall be randomly sampled and tested by a certified laboratory for *Salmonella*. The pond water in which food turtles are raised shall be tested at least once every year by a certified laboratory for *Vibria Cholera*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), LR 30:1445 (July 2004), LR 31:

**§2313. Issuance of Health Certificates**

A. Accredited Louisiana-licensed and department-approved veterinarians will issue official health certificates.

B. Health certificates shall not be issued on groups of turtles or eggs until the turtles or eggs and pond in which the turtles are raised have been inspected and tested as required by these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:352 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), LR 31:

**§2321. Proper Disposal**

A. Because of the danger posed by the emergence of bacteria resistant to antibiotics used to kill *Salmonella* and other harmful bacteria, licensed pet turtle farmers who use Garosol to treat turtle eggs and/or turtles shall follow approved disposal procedures, including but not limited to, the following:

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:353 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1571 (August 2000), LR 31:

Bob Odom  
Commissioner

0504#029

**DECLARATION OF EMERGENCY**

**Department of Environmental Quality  
Office of Environmental Assessment**

Laboratory Accreditation Exemption for Analyses  
of Target Volatile Organic Compounds  
(LAC 33:I.4719)(OS064E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality (Department) to use emergency procedures to establish rules, and of R.S. 30:2011 and R.S. 30:2074, which allows the department to establish standards, guidelines, and criteria, to

promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule.

The department relies on analytical data submitted both directly and indirectly to the department to determine compliance with both state and federal regulations. As a result of deadlines established in current Louisiana regulations, the department is prohibited from accepting data from commercial laboratories that have not received departmental accreditation. This Rule will allow the department to accept data from laboratories that have supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory. The department recently issued a number of Administrative Orders to certain facilities requiring monitoring and testing of ozone precursors. In order to comply with these orders, the facilities will drastically increase the number of samples taken and analyzed. A finding of imminent peril to public health, safety, and welfare is based on the insufficient number of accredited laboratories existing at this time that are capable of performing the volume of sample analyses within the time frame required by the department.

The department relies on the analytical data to determine permit compliance, enforcement issues, and effectiveness of remediation of soils and groundwater. Permit issuance and compliance are effective means of determining the impact on human health and the environment. The department must have access to accurate, reliable, precise analytical data in order to meet its mandate to protect human health and the environment.

This Emergency Rule is effective on March 18, 2005, 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 OS064E, you may contact the Regulation Development Section at (225) 219-3550.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary**

**Subpart 3. Laboratory Accreditation**

**Chapter 47. Program Requirements**

**§4719. Implementation**

A. All commercial laboratories analyzing data as of the effective date of these regulations that are directly or indirectly submitting data to the department must submit an application for accreditation as required in LAC 33:I.4701.A.1, including the review fee, by July 1, 2000. The department shall not accept laboratory data generated by laboratories that do not comply with this deadline until such laboratories receive accreditation and fully comply with the requirements of this Section. Except as provided in Subsection E of this Section, the department shall not accept environmental data submitted to the department either directly or indirectly until the laboratory has applied for accreditation under these regulations.

B. All laboratories subject to these regulations must receive accreditation from the department, as provided in these regulations, undergo an on-site inspection as specified in LAC 33:I.4701.A.2, and successfully participate in proficiency evaluations as required in LAC 33:I.4701.A.3 by December 31, 2000, or as otherwise agreed to by the

department and the applicant, not to exceed one year from December 31, 2000. Except as provided in Subsection E of this Section, the department shall not accept data generated by laboratories that do not comply with these deadlines until such laboratories receive accreditation and fully comply with the requirements of this Section.

C. - D. ...

E. The department shall accept analytical data generated by a laboratory that is not accredited under these regulations, provided that:

1. the laboratory has supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory and that the laboratory follows all requirements established by the EPA-approved method; and

2. the laboratory is submitting analyses for target volatile organic compounds listed in Table 1 of this Section using Compendium Method TO-14A and Compendium Method TO-15, as described in *The Compendium of Methods for the Determination of Toxic Organic Compounds in Air; Second Edition* (EPA 625/R-96/010b), with modifications as specified below:

- a. a flame ionization detector (FID) must be used for the detector;
- b. a one point calibration with propane must be used;
- c. a reporting limit of at least 10 parts per billion (ppb) must be used;
- d. any analytical result below the method detection limit (MDL) must be reported and flagged as an estimated value;
- e. any analytical result at the instrument detection limit (IDL) must be reported and flagged as an estimated value.

<b>Table 1</b>	
<b>Target Volatile Organic Compounds</b>	
Acetylene	
Benzene	
1,3-Butadiene	
n-Butane	
1-Butene	
cis-2-Butene	
trans-2-Butene	
Cyclohexane	
Cyclopentane	
2,2-Dimethylbutane	
2,3-Dimethylbutane	
2,3-Dimethylpentane	
2,4-Dimethylpentane	
Ethane	
Ethylene	
Ethylbenzene	
n-Heptane	
n-Hexane	
1-Hexene	
Isobutane	
Isopentane	
Isoprene (2-methyl-1,3-butadiene)	
Methylcyclohexane	
Methylcyclopentane	
2-Methylheptane	
3-Methylheptane	
2-Methylhexane	
3-Methylhexane	
2-Methylpentane	

<b>Table 1</b>	
<b>Target Volatile Organic Compounds</b>	
3-Methylpentane	
n-Octane	
1-Pentane	
n-Pentane	
cis-2-Pentene	
trans-2-Pentene	
Propane	
Propylene	
Styrene	
Toluene	
2,2,4-Trimethylpentane (isooctane)	
2,3,4-Trimethylpentane	
m/p-Xylene	
o-Xylene	

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), LR 29:312 (March 2003), amended by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

Mike McDaniel, Ph.D.  
Secretary

0504#005

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of Environmental Assessment

Remediation of Sites with Contaminated Media  
(LAC 33:V.109)(HW084E5)

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

This is a renewal of Emergency Rule HW084E4, which was effective December 2, 2004, and published in the *Louisiana Register* on December 20, 2004. The department is drafting a Rule to promulgate these regulation changes.

Current regulation causes contaminated environmental media to retain the description of having RCRA-listed waste "contained-in," therefore slowing the remediation of the site or possibly halting it completely due to administration and disposal issues. This Rule will remove a regulatory hurdle that deters site remediation. The incentive to remediate pollution stems from the resulting substantially reduced disposal and transportation costs for contaminated environmental media that are not required to be managed in the same manner as hazardous waste. Language has been added to further define the management of contaminated media as nonhazardous. The Rule will also result in simplification of the waste handling process by reducing administrative requirements and providing greater consistency with non-RCRA waste handling requirements

and practices. This will provide strong motivation to initiate and accelerate voluntary remediation of contaminated sites without increasing risks to human health or the environment.

This Emergency Rule is effective on April 1, 2005, 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 HW084E5 you may contact the Regulation Development Section at (225) 219-3550.

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part V. Hazardous Waste and Hazardous Materials**

#### **Subpart 1. Department of Environmental Quality Hazardous Waste**

#### **Chapter 1. General Provisions and Definitions**

#### **§109. Definitions**

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

\* \* \*

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

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

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

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

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

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

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

3. - 6.b. ...

\* \* \*

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

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

Mike D. McDaniel, Ph.D.  
Secretary

0504#026

## **DECLARATION OF EMERGENCY**

### **Department of Environmental Quality Office of Environmental Assessment**

Waste Tires Amendments  
(LAC 33:VII.10505, 10509, 10519,  
10521, 10535, and 10537)(SW039E2)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality declares that an emergency action is necessary in order to strengthen the regulations that will ensure proper processing, recycling, marketing, and disposal of waste tires generated in Louisiana. Waste tires that are not processed, recycled, and marketed in accordance with LAC 33:VII.Chapter 105 create environmental and health-related problems and pose a significant threat to the safety of the community. In particular, improper handling of waste tires results in breeding grounds for mosquitoes, fostering West Nile and other mosquito-borne diseases in the environment. The elimination of breeding areas for mosquitoes will reduce the exposure to these insects and the serious health problems associated therewith. This is a renewal of Emergency Rule SW039E1, which was effective on November 27, 2004, and published in the *Louisiana Register* on December 20, 2004.

A Notice of Intent for proposed Rule SW039 to promulgate these regulation changes was published in the March 20, 2005, *Louisiana Register*.

The Waste Tire Management Fund, established to temporarily subsidize the processing, recycling, and marketing of waste tires, has not been generating sufficient funds to provide for the proper processing, recycling, and marketing of waste tires. The failure to provide sufficient funds for the waste tire program may result in the resumption of illegal tire disposal, precipitating an increase in breeding areas for disease carrying vectors and endangering the health of the public and the aesthetics of the environment. Act 846 of the 2004 regular legislative session authorized new fees to be collected. This Emergency Rule allows for the collection of those fees resulting from the sale of all tires, including recapped/retreaded tires, and adds a new category of motor vehicle dealers. The collection of the fees was effective on September 15, 2004.

This Emergency Rule is effective on March 27, 2004, 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 SW039E2, you may contact the Regulation Development Section at (225) 219-3550.

### Title 33

## ENVIRONMENTAL QUALITY

### Part VII. Solid Waste

#### Subpart 2. Recycling

#### Chapter 105. Waste Tires

##### §10505. Definitions

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

\*\*\*

*Motor Vehicle Dealer*—any person, business, or firm registered with the state of Louisiana that engages in the commercial sale of new motor vehicles.

\*\*\*

*Recapped or Retreaded Tire*—any tire that has been reconditioned from a used tire and sold for use on a motor vehicle.

\*\*\*

*Sale of a Motor Vehicle*—any sale and/or lease of a motor vehicle that would require registration, under the name of the consumer, with the Louisiana Office of Motor Vehicles.

\*\*\*

*Tire Dealer*—any person, business, or firm that engages in the sale of tires, including *recapped or retreaded tires*, for use on motor vehicles.

\*\*\*

*Waste Tire*—a whole tire that is no longer suitable for its original purpose because of wear, damage, or defect. *Waste tire* does not include a tire weighing over 500 pounds and/or a solid tire.

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the

Office of Environmental Assessment, Environmental Planning Division, LR 26:2773 (December 2000), LR 27:829 (June 2001), LR 27:2226 (December 2001), LR 28:1953 (September 2002), LR 29:2779 (December 2003), amended by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

##### §10509. Prohibitions and Mandatory Provisions

A. - G. ...

H. All persons who sell tires shall retain and make available for inspection, audit, copying, and examination, a record of all tire transactions in sufficient detail to be of value in determining the correct amount of fee due from such persons. The records retained shall include all sales invoices, purchase orders, inventory records, and shipping records pertaining to any and all sales and purchases of tires. This recordkeeping provision does not require anything more than what is already required by R.S. 47:309(A).

I. Each tire wholesaler shall maintain a record of all tire sales made to dealers in this state. This recordkeeping provision does not require anything more than what is already required by R.S. 47:309(A). These records shall contain and include the name and address of each tire purchaser and the number of tires sold to that purchaser.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:38 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2774 (December 2000), amended by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

##### §10519. Standards and Responsibilities of Generators of Waste Tires

A. ...

B. Tire dealers must accept from the purchaser, at the time of purchase, one waste tire for every tire sold, unless the purchaser elects to retain the waste tire.

C. Each tire dealer doing business in the state of Louisiana shall be responsible for the collection of the \$2 waste tire fee upon the sale of each passenger/light truck tire, \$5 waste tire fee upon the sale of each medium truck tire, and \$10 waste tire fee upon the sale of each off-road tire. For recapped or retreaded tires, a waste tire fee of \$1.25 shall be collected upon the sale of each recapped or retreaded tire. *Tire dealer* includes any dealer selling tires in Louisiana.

D. - E.1. ...

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

F. - J. ...

K. No generator shall allow the removal of waste tires from his place of business by anyone other than an authorized transporter, unless the generator generates 50 or less waste tires per month from the sale of 50 tires. In this

case, the generator may transport his waste tires to an authorized collection or permitted processing facility provided LAC 33:VII.10523.C is satisfied.

L. A generator who ceases the sale of tires at the registered location shall notify the Office of Management and Finance, Financial Services Division, within 10 days of the date of the close or relocation of the business. This notice shall include information regarding the location and accessibility of the tire sale and monthly report records.

M. Generators of waste tires shall segregate the waste tires from any usable tires offered for sale.

N. - O. ...

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:40 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2777 (December 2000), LR 27:830 (June 2001), LR 27:2227 (December 2001), LR 28:1953 (September 2002), LR 29:1818 (September 2003), LR 29:2780 (December 2003), amended by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

#### **§10521. Standards and Responsibilities of Motor Vehicle Dealers**

A. All existing motor vehicle dealers shall notify the Office of Management and Finance, Financial Services Division, of their existence and obtain an identification number. Notification shall be on a form provided by the Office of Management and Finance, Financial Services Division. Any new motor vehicle dealer shall notify the Office of Management and Finance, Financial Services Division, within 30 days of commencement of business operations.

B. Motor vehicle dealers doing business in the state of Louisiana, who sell new vehicles, shall be responsible for the collection from the consumer of the \$2 waste tire fee for each tire upon the sale of each vehicle that has passenger/light truck tires, the \$5 waste tire fee for each tire upon the sale of each vehicle that has medium truck tires, and the \$10 waste tire fee for each tire upon the sale of each off-road vehicle. No fee is collected on the designated spare tire.

C. Motor vehicle dealers shall remit all waste tire fees collected as required by LAC 33:VII.10535.B and C to the department on a monthly basis on or before the twentieth day following the month during which the fees were collected. The fees shall be remitted to the Office of Management and Finance, Financial Services Division. Each such dealer shall also submit a Monthly Waste Tire Fee Report (Form WT02, available from the Office of Management and Finance, Financial Services Division) to the Office of Management and Finance, Financial Services Division, on or before the twentieth day of each month for the previous month's activity, including months in which no fees were collected. Each motor vehicle dealer is required to

make a report and remit the fee imposed by this Section and shall keep and preserve records as may be necessary to readily determine the amount of fee due. Each such dealer shall maintain a complete record of the quantity of vehicles sold, together with vehicle purchase and sales invoices, and inventory records, for a period of no less than three years. These records shall be made available for inspection by the administrative authority at all reasonable hours.

D. Motor vehicle dealers must provide notification to the public sector via a sign, made available by the Office of Management and Finance, Financial Services Division, indicating that:

"All Louisiana motor vehicle dealers selling new vehicles are required to collect a waste tire cleanup and recycling fee from the consumer of \$2 for each tire upon the sale of each vehicle that has passenger/light truck tires, \$5 for each tire upon the sale of each vehicle that has medium truck tires, and \$10 for each tire upon the sale of each off-road vehicle. These fees shall also be collected upon replacement of all recall and adjustment tires. No fee shall be collected on the designated spare tire."

E. The waste tire fee established by R.S. 30:2418 shall be listed on a separate line of the retail sales invoice or buyers order. No tax of any kind shall be applied to this fee.

F. A motor vehicle dealer who ceases the sale of motor vehicles at the registered location shall notify the Office of Management and Finance, Financial Services Division, within 10 days of the date of the close or relocation of the business. This notice shall include information regarding the location and accessibility of the motor vehicle sales and monthly report records.

G. Motor vehicle dealers, who generate waste tires, shall comply with the manifest requirements of LAC 33:VII.10533.

H. Motor vehicle dealers shall comply with LAC 33:VII.10519.H for all waste tires and waste tire material collected and/or stored.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

#### **§10535. Fees and Fund Disbursement**

A. - A.8. ...

B. Waste Tire Fee upon Promulgation of These Regulations. A waste tire fee is hereby imposed on each tire sold in Louisiana, to be collected from the purchaser by the tire dealer and motor vehicle dealer at the time of retail sale. The fee shall be \$2 for each passenger/light truck tire, \$5 for each medium truck tire, and \$10 for each off-road tire. No fee shall be collected on tires weighing more than 500 pounds or solid tires.

C. - D.10. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2781 (December 2000), LR 27:832 (June 2001), LR 27:2228

(December 2001), amended by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

**§10537. Enforcement**

A. ...

B. Investigations and Audits: Purposes, Notice. Investigations shall be undertaken to determine whether a violation has occurred or is about to occur, the scope and nature of the violation, and the identity of the persons or parties involved. Upon written request, the results of an investigation shall be given to any complainant who provided the information prompting the investigation and, if advisable, to any person under investigation, if the identity of such person is known. In cases where persons selling tires have failed to report and remit the waste tire fee to the administrative authority, and the person's records are inadequate to determine the proper amount of fee due, or in cases(s) where a grossly incorrect report or a report that is false or fraudulent has been filed, the administrative authority shall have the right to estimate and assess the amount of the fee due, along with any interest accrued and penalties. The burden to demonstrate to the contrary shall rest upon the audited entity.

C. - E.2.c. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2782 (December 2000), LR 28:1954 (September 2002), amended by the Department of Environmental Quality, Office of Environmental Assessment LR 31:

Mike D. McDaniel, Ph.D.  
Secretary

0504#006

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

Veterinary Practice **Wellness Clinic**  
(LAC 46:LXXXV.700 and 711)

The Louisiana Board of Veterinary Medicine has adopted the following Emergency Rule effective April 11, 2005, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953, and the Veterinary Practice Act, R.S. 37:1569, and it shall be in effect for the maximum period allowed under law or until adoption of the Rule, whichever occurs first.

The board has developed and adopted this Emergency Rule clarifying and implementing the regulatory requirements of a licensed veterinarian conducting a wellness or preventative care clinic in keeping with its function as defined by the state legislature in the Veterinary Practice Act. The immediate clarification and implementation of the requirements of a wellness or preventative care clinic and related matters are in the best interest for the protection of the public health and safety. The rule will allow a veterinarian licensed by the board to administer vaccines, perform examinations, and/or diagnostic procedures to promote good health, excluding

treatment for a diagnosed disease, illness or medical condition, at a location other than a veterinary hospital, clinics, or mobile clinic. The Emergency Rule does not limit or adversely impact the practices of licensed veterinarians in hospitals, clinic or mobile clinics, or from conducting programs at a location for the administration of rabies vaccination solely for the specific purpose of rabies prevention. The proposed rule amendment has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 7. Veterinary Practice**

**§700. Definitions**

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*Wellness or Preventative Care Clinic* A service in which a veterinarian licensed by the board administers vaccine, performs examinations, and/or diagnostic procedures to promote good health, excluding treatment for a diagnosed disease, illness or medical condition, at a location other than a veterinary hospital, clinic, or mobile clinic. A program for the administration of rabies vaccination conducted at a location solely for the specific purpose of rabies prevention shall not be considered a wellness or preventative care clinic.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328 (October 1993), amended LR 20:660 (June 1994), LR 20:1381 (December 1994), LR24:940, 941 (May 1998), LR 24:1932 (October 1998), LR 24:2257 (December 1998), LR 27:51 (January 2001), LR 27:543 (April 2001), LR 31:

**§711. Definitions and Classification of Practice**

**Facilities**

A. - D.2. ...

E. A wellness or preventative care clinic shall have a published physical address for the specific location, telephone facilities for responding to emergency situations, and the following.

1. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall have a prior written agreement with a local veterinary hospital or clinic, within a 30 mile- or 30 minute-travel time, to provide laboratory services, hospitalization, surgery, and/or radiology, if these services are not available at the wellness or preventative care clinic.

2. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall have a prior written agreement with a local veterinary hospital or clinic, within a 30 mile- or 30 minute-travel time, to provide emergency care services. A notice of available emergency care services, including the telephone number and physical address of the local veterinary hospital or clinic, shall be posted in a conspicuous place at the wellness or preventative care clinic, and a copy of the notice or information shall be given to each client prior to the administration of a vaccine, the performance of an examination and/or a diagnostic procedure to promote good health.

3. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall



physically remain on site until all patients are discharged to their respective owners, or authorized agents.

4. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall comply with the requirements for record keeping regarding the storage, maintenance and availability to the client of the medical records for the patients as set forth in the board's rules on record keeping. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall be the owner of the medical records of the patients.

5. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall be responsible for consultation with clients and the prompt referral of patients when disease, illness or a medical condition is diagnosed.

6. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall be responsible for the information and representations provided to the clients by the staff at the wellness or preventative care clinic.

7. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall have his license or current renewal, in good standing, to practice veterinary medicine in Louisiana on display in a conspicuous place at each location of a wellness or preventative care clinic.

8. Operation of a wellness or preventative care clinic shall also have the following on site at each location:

- a. a clean, safe location;
- b. meet local and state sanitation requirements;
- c. lined waste receptacles;
- d. fresh, running water for cleaning purposes and first aid;
- e. an examination area with good lighting and smooth, easily disinfected surfaces;
- f. all drugs, medicines, or chemicals shall be stored, inventoried, prescribed, administered, dispensed, and/or used in accordance with federal, state and local laws and rules;
- g. all equipment shall be kept clean and in proper working order;
- h. the ability to address sudden life-threatening emergencies which may arise, including the availability, on site, of oxygen, resuscitation drugs, treatment for shock, and fluid administration materials; and
- i. the proper disposal of biomedical waste and the required facilities, on site, for such disposal, as well as documentation on site to verify the proper disposal of biomedical waste.

9. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall make all decisions which involve, whether directly or indirectly, the practice of veterinary medicine and will be held accountable for such decisions in accordance with the Veterinary Practice Act, the board's rules, and other applicable laws.

10. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall be responsible for compliance with all standards and requirements set forth in the Veterinary Practice Act, the board's rules, and other applicable laws.

11. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall provide a copy of any signed written agreement, including renewal, extension or amendment, required by this rule to the board prior to commencement of the terms of the agreement.

12. The veterinarian operating or providing permissible services in a wellness or preventative care clinic shall provide the board, upon written demand, a copy of the written agreement with the local veterinary hospital or clinic required by this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1330 (October 1993), amended LR 23:969 (August 1997), LR 24:2123 (November 1998), LR 31:

Wendy D. Parrish  
Administrative Director

0504#077

## **DECLARATION OF EMERGENCY**

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

Medicaid Eligibility Treatment of Loans, Mortgages,  
Promissory Notes, and Other Property Agreements

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.

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 amended Section 1917 (c) of the Social Security Act and added Section 1917 (d) to set forth the rules under which transfers of assets and trusts must be considered in determining eligibility for Medicaid. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register*, Volume 22, Number 5). Section I-1600 of the Medicaid Eligibility Manual addresses the treatment of resources in the eligibility determination process. The bureau has decided it is necessary to amend the May 20, 1996 Rule to revise Medicaid policy in regard to treatment of certain loans, mortgages, promissory notes, and property agreements in the Medicaid eligibility determination process. These changes are needed to curb abuse of the transfer of assets section of the Omnibus Budget Reconciliation Act of 1993.

This action is being taken in order to avoid a budget deficit. It is estimated that implementation of this Emergency Rule will decrease expenditures for the Medicaid Program by approximately \$2,136,600 for the state fiscal year 2004-2005.

### Emergency Rule

Effective April 20, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the May 20, 1996 Rule governing treatment of transfer of assets in the determination of Medicaid eligibility. This policy change applies to applications, renewals of eligibility or changes in situation for all individuals except for those persons receiving Supplemental Security Income (SSI) or deemed to be receiving SSI.

A. Definitions. Unless otherwise specifically provided herein, the words and terms used in this rule shall be defined as follows:

*Family Member/Relative* includes, but is not limited to, the following categories of relatives of the applicant for medical assistance:

1. adopted child;
2. stepchild;
3. stepparent;
4. stepsister or stepbrother;
5. mother- or father-in-law;
6. daughter- or son-in-law;
7. sister- or brother-in-law; or
8. any descendants, ascendants, or collaterals by blood or consanguinity.

*Entities* include, but are not limited to, partnerships, corporations, limited liability corporations, sole proprietorships, and any other entity or group.

B. Loans, Mortgages, Promissory Notes, and Property Agreements or Assignments. A loan, mortgage, promissory note, property agreement or property assignment is a countable resource and a potential transfer of assets. If a loan, mortgage, promissory note, property agreement or property assignment is made by or between family members or relatives, the full face value of the instrument will be a countable resource in Medicaid eligibility determination regardless of any non-negotiability, non-transferability or non-assignability provisions contained therein. This policy shall also apply to any such instruments by or between any entities owned, either partially or wholly, by family members or relatives of the applicant for medical assistance. Entities include, but are not limited to, partnerships, corporations, limited liability corporations, sole proprietorships, and any other entity or group.

Existing loans, mortgages, promissory notes, property agreements or property assignments which are labeled non-negotiable, non-assignable or non-transferable, will be evaluated in regard to whether the buyer has been making good faith efforts (i.e., making scheduled payments) since the agreement was executed to fulfill the contractual obligation. Failure to make good-faith efforts to fulfill the contractual obligation shall result in the full face value of the instrument being considered a countable resource in Medicaid eligibility determination.

C. Instruments containing Certain Provisions. Regardless of any non-assignability, non-negotiability or non-transferability provisions contained therein, any loans, mortgages, promissory, property agreements or property assignments executed with any individual or entity which contains any of the following provisions will be considered a resource without any further evaluation:

1. payments are not in equal monthly installments (contain balloon payments or interest only payments) even if the principle is due within life expectancy;
2. terms for repayment that exceed the holder's life expectancy;
3. self-canceling clauses;
4. interest rates at execution are less than the national prime rate; or
5. clauses that forgive a portion of the principal.

Existing loans, mortgages, promissory notes, property agreements or property assignments which are labeled non-negotiable, non-assignable or non-transferable established before the effective date of this rule will be evaluated under transfer of resource policy.

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

0504#068

### DECLARATION OF EMERGENCY

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

Professional Services Program **Physician Services**  
Supplemental Payment

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Healthcare Common Procedure Code System. Reimbursement for these services is a flat fee established by the bureau less the amount which any third party coverage would pay. The bureau proposes to provide a supplemental payment for services provided by physicians or other eligible professional service practitioners in qualifying essential state-owned or operated physician practice plans organized by or under the control of a state academic health system or other state entity. The supplemental payment will bring the Medicaid rate for services provided by these physicians/practitioners up to the rate paid by commercial insurers for the same service. To qualify for this supplemental payment, the practice plans must have entered into an agreement to provide the community rate data

necessary for satisfactorily calculating the supplemental payments to Medicaid on an annual basis. This action is being taken to enhance federal revenue. It is estimated that implementation of this Emergency Rule will increase expenditures for physician services by approximately \$1,500,000 for the state fiscal year 2004-2005.

#### **Emergency Rule**

Effective for dates of service on or after April 1, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will provide supplemental Medicaid payments for qualifying essential state-owned or operated physician practice plans organized by or under the control of a state academic health system or other state entity.

The supplemental payment to each qualifying physician or other eligible professional services practitioner in the practice plan will equal the difference between the Medicaid payments otherwise made to these qualifying providers for professional services and the average amount that would have been paid at the equivalent community rate. The community rate is defined as the average amount that would have been paid by commercial insurers for the same services.

The supplemental payments shall be calculated by applying a conversion factor to actual charges for claims paid during a quarter for Medicaid services provided by the state owned or operated practice plan providers. This conversion factor shall be established annually for qualifying practice plans by determining the amount that private commercial insurance companies paid for commercial claims submitted by the state owned or operated practice plan and dividing that amount by the respective charges for these payers. The commercial payments and respective charges shall be obtained for the state fiscal year preceding the reimbursement year. If this data is not provided satisfactorily to DHH, the default conversion factor shall equal "1." The actual charges for paid Medicaid services shall be multiplied by the conversion factor to determine the maximum allowable Medicaid reimbursement. For eligible non-physician practitioners, the maximum allowable Medicaid reimbursement shall be limited to 80 percent of this amount. Then, the actual non-supplemental Medicaid payments to the qualifying state owned or operated physician practice plans shall be subtracted from the maximum Medicaid reimbursable amount to determine the supplemental payment amount. The supplemental payment for services provided by the qualifying state owned or operated physician practice plan will be implemented through a quarterly supplemental payment to providers, based on specific Medicaid paid claim data.

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

Interested persons may submit written comments to Ben A. Bearden at the following address: 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

0504#007

### **DECLARATION OF EMERGENCY**

#### **Department of Revenue Office of Alcohol and Tobacco Control**

Self-Service Checkout of Alcohol and Tobacco  
(LAC 55:VII.201 and 3115)

Under authority of R.S. 26:793, 26:90 and 47:833 and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, is issuing an Emergency Rule to adopt LAC 55:VII.201 and LAC 55:VII.3115 to provide age verification requirements for alcoholic beverage and tobacco product sales through unattended self-checkout registers.

This Emergency Rule is necessary to adopt additional safeguards against the unlawful sale of alcoholic beverages and tobacco products to persons under the legal age of consumption of these beverages and products and to protect the safety, welfare, health, peace, and morals of the people of the state. This adoption extends the provisions of this Emergency Rule, originally adopted on August 18, 2004 and printed on page 1992 of the September 20, 2004 edition of the *Louisiana Register*. This Emergency Rule is effective April 11, 2004, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or adoption of the permanent Rule, whichever occurs first.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part VII. Alcohol And Tobacco Control**

#### **Subpart 1. Beer And Liquor**

#### **Chapter 2. Alcoholic Beverage Permits**

#### **§201. Prohibited Acts By Retailer**

A. No retailer may sell or deliver beer, spirits, wine or any other alcoholic beverage, whether high or low alcoholic content, in a retail establishment to any person through any unattended or self-service checkout counter or mechanical device unless the purchaser submits to a clerk a valid driver's license, selective service card, or other lawful identification which on its face establishes the age of the person as 21 years or older and there is no reason to doubt the authenticity and correctness of the identification.

B. Violation of this Section by a retail dealer's agent, associate, employee, representative, or servant will be considered the retail dealer's act for purposes of suspension or revocation of a permit.

C. Violation of this Section subjects the retail dealer to penalties provided in R.S. 26:90, including but not limited to suspension or revocation of his permit and penalty provisions in R.S. 26:171.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:90.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office Alcohol and Tobacco Control, LR 31:

**Subpart 2. Tobacco**

**Chapter 31. Tobacco Permits**

**§3115. Age Verification Requirements**

A. Before a seller mails, ships, or otherwise delivers cigarettes cigars, pipe tobacco, chewing tobacco, smokeless tobacco, or any other tobacco product of any kind in connection with a sale, the seller must verify the consumer's age through electronic or written communication.

B. Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses.

C. No retailer may sell or deliver cigarettes, cigars, pipe tobacco, chewing tobacco, smokeless tobacco, or any other tobacco product of any kind in a retail establishment to any person through any unattended or self-service checkout counter or mechanical device unless the customer submits to a clerk a valid driver's license, selective service card, or other lawful identification that on its face establishes the age of the person as 18 years or older and there is no reason to doubt the authenticity and correctness of the identification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:833.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office Alcohol and Tobacco Control, LR 31:

Murphy J. Painter  
Commissioner

0504#051

**DECLARATION OF EMERGENCY**

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

**FITAP, Food Stamp Program, and KCSP Combat Pay  
(LAC 67:III.1229, 1980, and 5329)**

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 2, Subpart 3, and Subpart 13, effective March 15, 2005. This Rule shall remain in effect for a period of 120 days.

Pursuant to P.L. 108-447, the Consolidated Appropriations Act of 2005, the agency will amend §1229 in the Family Independence Temporary Assistance Program (FITAP), §1980 in the Food Stamp Program, and §5329 in the Kinship Care Subsidy Program (KCSP) to exclude from countable income additional pay received and made available to the household by a member of the United States Armed Forces deployed to a designated combat zone.

Emergency action in this matter is necessary as P.L. 108-447 mandates this change in the Food Stamp Program and failure to promulgate the Rule could result in the imposition of sanctions or penalties by the USDA, Food and Nutrition Service, the governing authority of the Food Stamp Program in Louisiana. To provide program continuity, this income exclusion will also be applied to the FITAP and KCSP programs.

**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. - 28. ...

29. Effective October 1, 2004 additional pay received and made available to the household by a member of the United States Armed Forces deployed to a designated combat zone.

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.

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:

**Subpart 3. Food Stamps**

**Chapter 19. Certification of Eligible Households**

**Subchapter I. Income and Deductions**

**§1980. Income Exclusion**

A. - C. ...

D. Effective October 1, 2004, additional pay received and made available to the household by a member of the United States Armed Forces deployed to a designated combat zone.

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 20:990 (September 1994), amended LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 29:607 (April 2003), LR 31:

**Subpart 13. Kinship Care Subsidy Program (KCSP)**

**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. - 27. ...

28. Effective October 1,2004, additional pay received and made available to the household by a member of the United States Armed Forces deployed to a designated combat zone.

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, and P.L.108-447.

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:

Ann Silverberg Williamson  
Secretary

0504#002

**DECLARATION OF EMERGENCY**  
**Department of Wildlife and Fisheries**  
**Wildlife and Fisheries Commission**

Oyster Season Closure  
North of the Mississippi River Gulf Outlet (MRGO)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters and it may suspend the fishing of oysters altogether from natural reefs not leased by it when such reefs are threatened with depletion as determined by the department, and a Resolution adopted by the Wildlife and Fisheries Commission on August 5, 2004 which authorized the Secretary for the Department of Wildlife and Fisheries to take emergency action if necessary to close areas based on oyster mortality and adverse impacts to oyster reefs, the secretary hereby declares:

The 2004/2005 oyster season in the public oyster seed grounds bordered on the north by the Louisiana/Mississippi state line and on the south by the Mississippi River Gulf Outlet (MRGO), excluding the Lake Borgne Public Oyster Seed Grounds as described in *Louisiana Administrative Code* (LAC) 76:VII.513, will close on Friday, April 8, 2005 at one-half hour after sunset. Hurricane-related oyster mortalities of over 30 percent on some reefs and heavy fishing effort during the season have reduced oyster abundance in this area and adversely impacted oyster reefs. This closure is being enacted to protect the remaining oyster resource.

The oyster season in the Lake Borgne Public Oyster Seed Ground as described in LAC 76:VII.513 will remain open.

Dwight Landreneau  
Secretary

0504#027

**DECLARATION OF EMERGENCY**  
**Department of Wildlife and Fisheries**  
**Wildlife and Fisheries Commission**

Shrimping Season Partial Opening of State Outside Waters

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicates that marketable shrimp, in sufficient quantities, are available for harvest, and a resolution adopted by the Wildlife and Fisheries Commission on January 4, 2005 which authorizes the secretary of the Department of Wildlife and Fisheries to reopen any area closed to shrimping when the closure is no longer necessary, the secretary hereby declares:

that state outside waters from the eastern shore of the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel red buoy line to the eastern shore of Belle Pass at latitude 29°05'07" N and longitude 90°13'30" W, shall reopen to shrimping at 6 a.m., Monday, April 4, 2005.

Recent biological samples taken by department personnel indicate that small white shrimp which have over-wintered in these waters from January through March have reached marketable sizes and the closure is no longer necessary. Significant numbers of small white shrimp still remain in State Outside Waters west of the Atchafalaya River Ship Channel to the western shore of Freshwater Bayou Canal at longitude 92°18'33" W, and this area will remain closed to shrimping until further notice.

Dwight Landreneau  
Secretary

0504#018

# Rules

## RULE

### Department of Agriculture and Forestry

Electing One Soil and Water  
Conservation District Supervisor  
(LAC 7:XLI.101)

LAC 70:XI, Soil and Water Conservation, has been moved from Title 70, Transportation to LAC 7:XLI, Agriculture and Animals. LAC 70:XI contains one Section: §101, Electing One Soil and Water Conservation District Supervisor. The authority for this Section has been reassigned to the Department of Agriculture and Forestry.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XLI. Soil and Water Conservation

#### Chapter 1. Annual Election for Supervisors

#### §101. Electing One Soil and Water Conservation District Supervisor

A. The rules and regulations for electing one soil and water conservation district supervisor in each of the 40 soil and water conservation districts annually, as adopted by the soil and water conservation committee, are as follows.

##### 1. General Rules

a. Act Number 231 of 1958 provides for an annual state election on the second Saturday in June.

b. Nominating petition forms shall be distributed by the district supervisors through county agents, SCS district conservationists, and others. All should encourage our best landowners or farm operators to qualify as candidates for district supervisors.

c. In order to qualify as a candidate to run for district supervisor, the candidate must be a qualified landowner or farm operator, must be a qualified voter within the state, and must present to the state committee a petition containing the names of at least 25 qualified voters. This petition shall be signed by the registrar of voters attesting that the names on the petition are qualified voters in the named Soil and Water Conservation District.

##### 2. Nominating Rules

a. There shall be a 30-day nominating period which shall begin 60 days before the annual election on the second Saturday in June.

b. Nominating petitions must be completed on the petition papers supplied by the Louisiana Soil and Water Conservation Committee and/or any Soil and Water Conservation District Office. Nominating petitions will be revised yearly and will be numerically numbered; all nominating petitions submitted for district elections must have a current revised date and carry the name assigned to that district by the state committee.

c. Petitions must be mailed by the state committee to each chairman in the 40 Soil and Water Conservation Districts on or before \_\_\_\_\_.

d. Petitions completed containing the names of candidates, together with the signatures of at least 25 legally qualified voters, must be in the state committee office on or before \_\_\_\_\_.

e. Instructions, together with the necessary ballots, shall be mailed to the chairman of each soil and water conservation district in due time before the election.

f. The chairman of the board and the four district supervisors in each district shall have charge of the election. It shall be their duty to select the polling places and notify the state committee of such selection in time to give due notice before the election. It shall also be their duty to appoint two election commissioners for each polling place, carry the ballots out to the polling places, and secure an accurate result of the election of each polling place or appoint a trustworthy person to carry out these duties. The chairman of each district shall immediately mail the results of the election to the state committee.

g. The state committee shall give due notice through the press before the election, of the election in districts where elections are necessary as soon as nominating petitions have been approved by the committee. The notice shall contain the polling places and hour that the polls will be opened and closed. In districts where there is no opposition, there will be no election.

h. The election commissioners at each poll where elections are being held shall open the poll at 8 a.m. and close at 7 p.m.

i. Each soil and water conservation district board shall provide the state committee with a list of names of the persons who served as commissioners at the annual election, second Saturday in June.

j. The state committee shall pay each commissioner who served at the polls for the state annual election \$25 per day and that districts may add up to an additional \$25 to this pay for commissioners from their state appropriated funds. The districts shall have three polling places in each parish, but not to exceed a maximum of eight in each district where more than two parishes are involved.

k. No provisions will be made by the district for the qualified voters to vote by absentee ballot during this election.

l. The state committee shall, on the regular meeting date in June, promulgate the election returns and announce the names of the elected district supervisors. Nominees who had no opposition may be declared elected upon approval of their nominating petitions.

m. If the total number of candidates duly presented in nominating petitions does not exceed the name of supervisor places to be filled by election, then and in that event, the state committee is authorized and empowered to dispense with the election procedure and to declare each of said candidates duly qualified as a supervisor without the requirement of an election the same as if his name had been presented to the qualified voters in an election. Candidates so qualified shall be considered for all purposes "Elected Supervisors."

n. The state committee shall supervise the conduct and prescribe regulations of elections for district supervisors.

o. A tally sheet is to be maintained at each polling place in a bound ledger book and pages are not to be removed. Persons appearing at the designated polling places for the purpose of voting in this election must present one of the following items of identification: voter registration card; driver's license; or Social Security card. If none of the items of identification are available, the person must sign a sworn statement certifying that he is a registered voter. After identification has been produced, or the sworn statement has been signed, the voter will then enter his name on the tally sheet and will be given a ballot by the election commissioner in order to cast his vote.

p. Illiterate or blind voters will be assisted only by the election commissioner and only if the voter requests assistance in marking a ballot.

q. All candidates participating may appoint two poll watchers per polling place if they so desire. However, poll watchers will not receive pay from the state committee.

r. The official ballot is to be marked with an X by a black, ballpoint pen and folded out of the presence of the election commissioner and poll watchers, then dropped in the ballot box. If the ballot is not marked with an X, it will be considered spoiled.

s. All spoiled or excess ballots are to be accounted for by the commissioners. The ballot box, without being removed from the public view, shall be opened by the commissioners and they shall proceed with counting the ballots found therein without unfolding them except so far as to ascertain that each ballot is single, and by comparing the ballots found in the box with the number shown by the poll lists to have been deposited. If the ballots found in any box are more than the number of ballots shown to have been deposited, the ballots shall all be replaced without being

unfolded in the box from which they were taken. One of the commissioners shall, without seeing the ballots and with his back to the box, thoroughly mingle them together, and another commissioner shall, without seeing the ballots and with his back to the box, publicly draw as many ballots as shall be equal to the excess. Without unfolding them, the commissioner shall at once mark them "uncounted in excess of poll list."

t. Ballot boxes are to be delivered only to election commissioners.

u. A sample of the current rules and regulations, official ballot and voters sworn statement for electing district supervisors will be posted in some conspicuous location at each polling place during the election so that voters will have the opportunity to review same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1204 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 1:253 (May 1975), amended LR 10:469 (June 1984), repromulgated by the Department of Agriculture and Forestry, LR 31:898 (April 2005).

Bob Odom  
Commissioner

0504#063

#### **RULE**

#### **Department of Civil Service Board of Ethics**

#### **Ethics Lobbying Expenditure Report (LAC 52:I.1908)**

Editor's Note: Section 1908 is being repromulgated to correct a printing error. The original Rule may be viewed in its entirety on pages 2668-2687 of the December 20, 2004 edition of the *Louisiana Register*.

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Civil Service, Louisiana Board of Ethics has adopted rules, and amendments to the rules for the Board of Ethics, as well as repeals the procedural rules for drug testing elected officials, since that statutory provision was declared unconstitutional.





**CERTIFICATION OF ACCURACY**

I hereby certify that the information contained herein is true and correct to the best of my knowledge, information, and belief; that all reportable expenditures have been included herein; and that no information required by the Lobbyist Disclosure Act [LSA-R.S. 24:50 et seq.] has been deliberately omitted.

\_\_\_\_\_  
Signature of Lobbyist

**SCHEDULE A: EXPENDITURES FOR LEGISLATION**

This schedule must be completed if you answered YES to either question 7 or 8 on the Lobbying Expenditure Report. If, during the period January 1 through June 30 or the period July 1 through December 31, you made either (a) an expenditure for any one legislator exceeding \$50 on any one occasion or (b) aggregate expenditures exceeding \$250 for any one legislator during a reporting period, then you must provide the aggregate total of expenditures made on that legislator in that reporting period. **NOTE: Report covering July-December is cumulative. You must include reportable expenditures from the first half of the year in Column #2.**

1. LEGISLATOR'S NAME	2. AMOUNT OF EXPENDITURES MADE ON A LEGISLATOR FOR WHOM YOU EITHER SPENT OVER \$50 ON ONE OCCASION OR MADE EXPENDITURES EXCEEDING \$250 BETWEEN JANUARY 1 AND JUNE 30.	3. AMOUNT OF EXPENDITURES MADE ON A LEGISLATOR FOR WHOM YOU EITHER SPENT OVER \$50 ON ONE OCCASION OR MADE EXPENDITURES EXCEEDING \$250 BETWEEN JULY 1 AND DECEMBER 31.	4. TOTAL OF COLUMNS 2 AND 3.

**SCHEDULE B: EXPENDITURES FOR RECEPTIONS, ETC.**

This schedule must be completed if you answered YES to either question 9 on the Lobbying Expenditure Report. The following information must be provided for all receptions, social gatherings, or other functions to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee of any committee, recognized caucus, or any delegation thereof, was invited.

1. NAME(S) OF GROUP(S) INVITED	2. DATE OF RECEPTION	3. LOCATION OF RECEPTION	4. TOTAL AMOUNT OF EXPENDITURES FOR ATTENDING LEGISLATORS*

**\*No amount expended on persons other than attending legislators is reportable.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 30:2682 (December 2004), repromulgated LR 31:629 (March 2005), LR 31:900 (April 2005).

R. Gray Sexton  
Administrator

0504#037

## RULE

### Department of Economic Development Office of Business Development Louisiana Economic Development Corporation

#### Economic Development Award Program (EDAP) and Economic Development Loan Program (EDLOP) (LAC 13:III.Chapter 1)

The Louisiana Department of Economic Development, Office of Business Development, and the Louisiana Economic Development Corporation, 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. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, have adopted the following Rule revising and eliminating certain provisions of the Rules of the Economic Development Award Program (EDAP), and supplementing and expanding or extending that program by adopting the following additional Rules for the Economic Development Loan Program (EDLOP).

The Department of Economic Development, Office of Business Development, and the Louisiana Economic Development Corporation, have found a need to revise and eliminate certain provisions of the Rules regarding the Economic Development Award Program (EDAP), and to supplement and expand or extend that program by providing additional Rules regarding the creation, regulation and establishment of guidelines for the Economic Development Loan Program (EDLOP). The revised EDAP Rules are an update of these provisions and eliminate the provisions relating to the Louisiana Opportunity Fund Program, which has not been utilized and which is no longer needed, since it has been replaced by the Governor's Economic Development Rapid Response Program. The new EDLOP Rules provide for loan funding of all or a portion of economic development projects in order to successfully secure the creation or retention of jobs by business entities newly locating in Louisiana or which may already exist in Louisiana and are expanding their operations, but require state assistance for such development, all of which will promote economic development in the state of Louisiana.

#### Title 13

#### ECONOMIC DEVELOPMENT

#### Part III. Financial Assistance Programs

#### Chapter 1. Economic Development Award Program (EDAP) and Economic Development Loan Program (EDLOP)

#### §101. Economic Development Award Program (EDAP); Preamble and Purpose

A. The Economic Development Award Program (EDAP) is vital to support the state's commitment to Cluster Based

(or Targeted Industry Based) Economic Development, and the state's long term goals as set forth in *Louisiana: Vision 2020*, which is the Master Plan for Economic Development for the state of Louisiana.

B. The purpose of this program is to finance publicly-owned infrastructure for industrial or business development projects that promote cluster or targeted industry economic development and that require state assistance for basic infrastructure development. Additionally, the Louisiana Department of Economic Development, with the approval of the Board of Directors of Louisiana Economic Development Corporation, may take necessary steps to successfully secure projects in highly competitive bidding circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:860 (June 2003), LR 31:902 (April 2005).

#### §103. Definitions

**Applicants**—the company and the public entity, collectively, requesting financial assistance from LED under this program.

**Award**—funding of financial assistance, appropriations, grants or loans approved under this program for eligible applicants.

**Award Agreement**—that agreement or contract hereinafter referred to between the company, the public entity, LED and LEDC through which, by cooperative endeavor or otherwise, the parties set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

**Awardee**—an applicant receiving an award under this program.

**Basic Infrastructure Project**—refers to those infrastructure projects funding for which is to be provided under this program.

**Company**—the business enterprise for which the project is being undertaken.

**EDAP**—the Economic Development Award Program.

**Infrastructure**—considered to be basic hard assets, permanent type assets, such as land, buildings, structures, substantial, installed or permanently attached machinery and/or equipment, streets, roads, highways, rights-of-way or servitudes, including paving or other hard surfacing, piping, drainage and/or sewage facilities, utility lines, poles and facilities, railroad spurs, tracks, cross ties, and all things similar or appurtenant thereto, and including costs related to the purchase, design, location, construction, and/or installation of such hard assets.

**Infrastructure Project**—refers to the undertaking for which an award is granted hereunder for the purchase, or new construction, improvement or expansion of land, roadways, parking facilities, equipment, bridges, railroad spurs, utilities, water works, drainage, sewage, buildings, ports and waterways.

**LED**—the Louisiana Department of Economic Development.

**LEDC**—the Louisiana Economic Development Corporation.

**Program** The Economic Development Award Program, including Basic Infrastructure Projects that are undertaken by LED, LEDC, the public entity and the company pursuant to these rules and the bylaws of LEDC.

**Project** Can expansion, improvement and/or provision of infrastructure for a public entity that promotes economic development, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

**Public Entity** The public or quasi-public entity responsible for engaging in the award agreement and pursuant thereto, for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

**Secretary** The Secretary of the Department of Economic Development, who is also the President of LEDC.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:902 (April 2005).

#### **§105. General Principles**

A. The following general principles will direct the administration of the Economic Development Award Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC board, after considering the recommendation of the secretary and/or the staff of LED or LEDC.

2. An award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Awards must reasonably be demonstrated to result in the improvement of or enhancement to the economic development and well-being of the state and local community or communities wherein the project is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and to the local community or communities wherein the project is or is to be located will be considered in making the award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the award.

7. Appropriate cost matching or funds matching by the Applicants, private investors, the local community and/or local governing authority, as well as among project beneficiaries will be a factor in the consideration of the award.

8. At the discretion of the LEDC board, a two-year moratorium from the date of an LEDC board approval or award of a grant may be required on additional EDAP awards to the same company at the same location.

9. Award funds shall be utilized for the approved project only.

10. Whether or not an award will be made is entirely in the discretion of the LEDC board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC board may, in its discretion, deem to be pertinent. The approval or rejection of any application for an award shall not establish any precedent and shall not bind the LEDC board, the LED secretary or the staff of LED or LEDC to any course of action with regard to any application.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005).

#### **§107. Eligibility**

A. An eligible application for the award must meet the general principles set forth above and the criteria set forth below, and the infrastructure project must be or will be owned by, and the ownership benefits or rights resulting from the infrastructure project must inure to the benefit of one of the following:

1. a public or quasi-public entity; or
2. a political subdivision of the state.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving an award, fail to maintain its eligibility during the term of the award agreement, the LEDC board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for awards under this program are:

- a. retail business operations;
- b. real estate developments;
- c. hospitality operations; or
- d. gaming operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services and gaming activities are not

provided directly and personally to individuals in any such facilities.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005).

#### **§109. Criteria for Basic Infrastructure Projects**

A. In addition to the general principles set forth above, Basic Infrastructure Projects must meet the criteria hereinafter set forth for an award under the Program:

1. Job creation and/or retention and capital investment:

a. Basic Infrastructure Projects must create or retain at least 10 permanent jobs in Louisiana.

b. Consideration will be given for projects having a significant new private capital investment.

c. The number of jobs to be retained and/or created as stated in the application for basic infrastructure projects will be strictly adhered to, and will be made an integral part of the award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as cluster or targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the US Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.

6. The minimum award request size shall be \$25,000.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.

8. If a company does not start the project or begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, within six months after its application approval, the LEDC board of directors, at its discretion, may cancel funding for the project, or require reapplication. LED or LEDC may require written, signed documentation demonstrating that the contemplated project has begun or has been started.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000),

amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003), LR 31:904 (April 2005).

#### **§111. Application Procedure for Basic Infrastructure Projects**

A. The applicants must submit an application to LED or LEDC on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including audited or certified financial statements and business projections;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. evidence of the number, types and compensation levels of jobs to be created or retained by the company in connection with the project, and the amount of capital investment for the project;

4. details of the health insurance coverage that is or will be offered to employees of all levels of the company;

5. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project described in the award application; and

6. any additional information that LED or LEDC may require.

B. The applicants and their applications must meet the general principles of §105, the eligibility requirements under §107, and meet the criteria set forth in §109 above, in order to qualify for an award under this program.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005).

#### **§113. Submission and Review Procedure for Basic Infrastructure Projects**

A. Applicants must submit their completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by LED or LEDC staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented;

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, including an evaluation based on the Regional Input/Output Model System II (RIMS), or its successor, will be prepared by LED or LEDC.

C. Upon determination that an application meets the general principles of §105, the eligibility requirements under §107, and meets the criteria set forth for this program under §109, the secretary of LED and/or the LED or LEDC staff will then make a recommendation to the LEDC board of directors. The application will then be reviewed and approved or rejected by the LEDC board in its discretion, after considering the recommendation of the secretary of LED and/or the staff of LED or LEDC. The cluster director or the targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC board as to the approval or disapproval of the award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005).

### **§115. General Award Provisions**

A. Except where indicated, these provisions shall be applicable to Basic Infrastructure Awards. All agreements, including those resulting from any expedited procedures, shall demonstrate the intent of the company, the public entity, LED, and LEDC to enter into the following.

1. Award Agreement. A written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, the public entity and the company(ies). The agreement will specify the performance objectives and requirements the company(ies) and the public entity will be required to meet, and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, and the payroll levels of such jobs. Under the agreement, the public entity will oversee the progress of the project. LED or LEDC will disburse funds to the public entity in a manner determined by LED or LEDC.

#### 2. Funding.

a. Eligible project costs may include costs related to the design, location, construction and/or installation of basic infrastructure hard assets, including, but not limited to, the following:

- i. engineering and architectural expenses related to the project;
- ii. site (land) and/or building acquisition;
- iii. site preparation;
- iv. construction, renovation and/or rebuilding expenses; and/or
- v. building materials.

b. Project costs ineligible for award funds include, but are not limited to:

- i. recurrent expenses associated with the project (e.g., operation and maintenance costs);
- ii. company moving expenses;
- iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the

Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity;

v. refinancing of existing debt, public or private;

vi. furniture, fixtures, computers, consumables, transportation equipment, rolling stock or movable equipment.

B. Amount of Award. Following the appropriation of funds for each fiscal year, the board of directors of LEDC shall allocate the amount of such funds available for Basic Infrastructure Awards.

#### 1. For Basic Infrastructure Awards:

a. matching funds shall be a consideration;

b. the portion of the total project costs financed by the award may not exceed:

i. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. 75 percent for projects in parishes with unemployment rates above the statewide average; or

iii. 50 percent for all other projects.

c. other state funds cannot be used as the match for EDAP funds;

d. all monitoring will be done by LED or LEDC. Expenditures for monitoring or fiscal agents may be deducted from awards;

e. the award amount shall not exceed 25 percent of the total funds allocated to the Basic Infrastructure Awards Program during a fiscal year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of \$3.1 Million;

f. the LEDC board of directors, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

#### C. Conditions for Disbursement of Funds.

1. Award funds will be available to the public entity on a reimbursement basis in accordance with the award agreement following submission of required documentation to LED or LEDC from the public entity.

#### 2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC board of directors will be considered eligible for reimbursement.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement (contract) has been agreed upon, signed and executed.

3. Award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed or obtained;

c. all other closing conditions specified in the award agreement have been satisfied.

4. Awardees will be eligible for reimbursement at 85 percent until all or substantially all of the tasks or work required by the award agreement have been performed or completed. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final 15 percent of the award amount will be paid after LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when LED or LEDC has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though 100 percent of all stated objectives of the award agreement may not have been fully achieved.

#### D. Compliance Requirements

1. Companies and public entities shall be required to submit progress reports, describing the progress towards the performance objectives specified in the award agreement. Progress reports by public entity shall include a review and certification of company's hiring records and the extent of company's compliance with contract employment commitments. Further, public entity shall oversee the timely submission of reporting requirements of the company to LED.

2. Award Agreements will contain "clawback" or refund provisions to protect the state in the event of a default. In the event a company or public entity fails to meet its performance objectives specified in its agreement with LED and LEDC, LED and LEDC shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event a company or public entity knowingly files a false statement in its application or in a progress report or other filing, the company or public entity and/or their representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company, public entity, or party to an award agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC is authorized to notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the public entity.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1640 (December 1997), LR 25:239 (February 1999), LR 26:238 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), LR 31:905 (April 2005).

#### **§117. Conflicts of Interest**

A. No member of Louisiana Economic Development Corporation, employee thereof, or employee of the Louisiana Department of Economic Development, nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), amended LR 31:906 (April 2005).

#### **§119. Reserved**

#### **§121. Reserved**

["General Award Provisions" redesignated as §115]

#### **§123. Reserved**

["Conflicts of Interest" redesignated as §117]

#### **§131. Economic Development Loan Program (EDLOP); Preamble and Purpose**

A. The Economic Development Loan Program (EDLOP) is vital to support, promote and enhance the state's commitment to economic development, and the state's long term goals as set forth in *Louisiana: Vision 2020*, which is the long-term Master Plan for Economic Development for the state of Louisiana. This program is a supplement to and an expansion or extension of the already existing Economic Development Award Program (EDAP).

B. The purpose of this program is to assist in the financing or loan funding of privately-owned property and improvements, including the purchase of a building site, the purchase or construction, renovation, rebuilding and improvement of buildings, their surrounding property, and for machinery and equipment purchases and rebuilding, all for business enterprises newly locating in Louisiana or for businesses already existing in this state which are expanding their operations and that require state assistance for such development, rebuilding or other such improvement, and for which LED and LEDC assistance is requested under this program, all of which will promote economic development and provide an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development,

Louisiana Economic Development Corporation, LR 31:906 (April 2005).

### §133. Definitions

**Applicant** The company or business enterprise requesting or seeking financial assistance, specifically a loan, from LED and LEDC under this program. The applicant may be, but is not required to be, joined in the application by any other person, public or private entity, as a co-applicant or as a guarantor.

**Award** Funding of financial assistance, specifically a loan, approved under this program for eligible applicants, which is to be repaid with interest over a period of time by the awardee/borrower.

**Awardee** Can applicant, company or business enterprise receiving a loan award under this program.

**Borrower** The company or business enterprise receiving and accepting a loan award under this program.

**Company** The business enterprise, being a legal entity duly authorized to do and doing business in the state of Louisiana, in need of loan funding for a project pursuant to these rules, which is undertaking the project or for which the project is being undertaken, and which is seeking or receiving a loan award under this program.

**Default** The failure to perform a task, to fulfill an obligation, or to do what is required; or the failure to pay, to repay or to meet a financial obligation.

**EDLOP** The Economic Development Loan Program.

**Financed Lease** A lease entered into that satisfies the criteria of a lease intended as a security device for the payment or repayment of a debt, a loan or an obligation; in which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the installment payments of the loan shall be the lease or rental payments.

**Guaranty** An agreement, promise or undertaking by a second party to make the payment of a debt or loan or to perform an obligation in the event the party liable in the first instance fails to make payment or to perform an obligation.

**LED** The Louisiana Department of Economic Development.

**LEDC** The Louisiana Economic Development Corporation.

**LEDC Board** The board of directors of the Louisiana Economic Development Corporation.

**Loan (or Loan Award)** Funding of financial assistance approved under this program for eligible applicants, which is to be repaid with interest over a period of time by the awardee/borrower.

**Loan Agreement (Award Agreement or Loan Award Agreement)** That agreement or contract hereinafter referred to between the company, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the terms and conditions of the loan to be provided pursuant to these rules, and the performance objectives and requirements of the company as consideration for the award of the loan provided pursuant to the company's application and these rules.

**Loan Participation** The sharing by one lender of a part or portion of a loan with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds, or may purchase a portion of the loan, and which participant or participants would be entitled

to share in the proceeds of the loan repayments and interest income.

**Program** The Economic Development Loan Program (EDLOP), involving such projects that are undertaken by LED, LEDC and the company pursuant to these rules and the bylaws of LEDC.

**Project (or Infrastructure Project)** Refers to the undertaking for which a loan award is sought and/or is granted hereunder for the purchase of a to be privately-owned building site, or for the purchase, construction, improvement, expansion, renovation, rebuilding or expansion of privately-owned buildings and their surrounding property, including parking facilities, private roads, railroad spurs and utility needs, including electrical, gas, telephone, water and sewerage lines, as well as certain qualified machinery and equipment, for a private entity which will promote economic development, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana.

**Promissory Note** A written promise to pay or repay a specified amount of money on a stated date, or within a stated time, in installments, or on demand.

**Secretary** The Secretary of the Department of Economic Development, who is also the President of LEDC.

**Security Interest** A lien, incumbrance or mortgage affecting movable or immovable property given by a debtor or borrower in favor of a creditor or lender to assure the debtor's or borrower's payment or repayment of a debt or promise to pay an amount of money, or for the fulfillment or performance of an obligation. A security interest may also be reserved in favor of the creditor or lender in the form of a lease, commonly called a "Financed Lease"; in which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the lease or rental payments shall be the installment payments of the loan.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005).

### §135. General Principles

A. The following general principles will direct the administration of the Economic Development Loan Program.

1. Loan awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC board, after considering the recommendation of the secretary and/or the staff of LED or LEDC.

2. A loan award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Loan awards must reasonably be demonstrated to result in an improvement of or enhancement to economic development of the state and the local community wherein the business is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and criteria, and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and the local community will be considered in approving the loan award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the loan award.

7. Appropriate cost matching or funds matching by the loan beneficiary, as well as private investors, the local community, local public entities, and/or local governing authority, will be a factor in the consideration of the loan award.

8. Loan funds shall be utilized for the approved project only.

9. Whether or not a loan award will be made is entirely in the discretion of the LEDC board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC board may, in its discretion, deem to be pertinent. The approval or rejection of any application for a loan award shall not establish any precedent and shall not bind the LEDC board, the LED secretary or the staff of LED or LEDC to any course of action with regard to any application.

10. A Loan Award may also take the form of a Loan Participation, wherein LED or LEDC may act as the originator of the loan, and may share or participate a portion of the loan with another lender or other lenders; or LED or LEDC may act as a participant in a loan, and accept a portion or a share of a loan originated by another lender or other lenders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005).

### **§137. Eligibility**

A. An eligible application for the loan award must be consistent with the general principles set forth in §135 above and the criteria set forth in §139 below, must demonstrate a need for the funding of the project consistent with these rules, and the project must be or will be owned by, and the ownership benefits or rights resulting from the project must inure to the benefit of the applicant company or business enterprise, which will also be the borrower.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving a loan award, fail to maintain its eligibility during the term of the award agreement, the LEDC board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for loans under this program shall include:

- a. retail business operations;
- b. real estate developments;
- c. hospitality operations; or
- d. gaming operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005).

### **§139. Criteria for Projects**

A. In addition to the general principles set forth in § 135 and the Eligibility requirements in §137 above, projects must meet the criteria hereinafter set forth for a loan award under this program.

1. Job Creation and/or Retention and Capital Investment

a. Projects must create or retain at least 10 jobs considered to be permanent jobs, in Louisiana.

b. Consideration will be given for projects having a significant new private capital investment.

c. The number of jobs to be retained and/or created, as stated in the application for projects, and their payroll levels will be strictly adhered to, and will be made an integral part of the loan award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to provide, expand or improve basic structural infrastructure and its use by the company, and secondary consideration will be given to projects involving machinery and equipment purchases or rebuilding.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.

6. The minimum loan award request size shall be \$25,000.00.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.



8. If a company does not start the project or begin the purchase or the construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, or execute purchase orders for machinery and equipment or orders for the rebuilding of machinery and equipment within 120 days after its application approval, the LEDC board of directors, at its discretion, may cancel funding for the project, or require reapplication. Copies of written, signed documentation may be required by LED or LEDC demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005).

#### **§141. Application Procedure for Projects**

A. The applicant must submit an application to LED or LEDC by letter or on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including audited or certified financial statements and business projections;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. a cash flow analysis of the project, providing detailed support for the use of the funding to be provided, and a proposed repayment schedule for the loan which is consistent with the revenues to be generated by the project;

4. evidence of the number, types and compensation levels of jobs to be created or retained by the company in connection with the project, the period of time for which the company will commit to maintain the new and/or retained jobs, and the amount of capital investment for the project;

5. details of the health insurance coverage that is or will be offered to employees of all levels of the company;

6. a statement or disclosure as to whether or not the company has sought or applied for any other type of financing (public or private) for this project, and the results or disposition of that search and/or application;

7. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project to be financed by the requested loan award; and

8. any additional information that LED or LEDC may require.

B. The applicant and its application must meet the general principles of §135, the eligibility requirements in §137, and meet the criteria set forth in §139 above, in order to qualify for a loan award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005).

#### **§143. Submission and Review Procedure for Projects**

A. An applicant must submit its completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by the staff of LED or LEDC. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented; and

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, including an evaluation based on the Regional Input/Output Model System II (RIMS), or its successor, will be prepared by LED or LEDC.

C. Upon determination that an application meets the general principles of §135, the eligibility requirements under §137, and meets the criteria set forth for this program under §139, the secretary of LED and/or the staff of LED or LEDC staff will then make a recommendation to the LEDC board of directors. The application will then be reviewed and approved or rejected by the LEDC board in its discretion, after considering the recommendation of the secretary of LED and/or the staff of LED or LEDC. The cluster director or targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC board as to the approval or disapproval of the loan award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005).

#### **§145. General Loan Award Provisions**

A. These provisions shall be applicable to loan awards. Loan award agreements resulting from the procedures for loan awards shall demonstrate the intent of the company, the LED, and LEDC to enter into the following.

1. Loan Agreement, Award Agreement or Loan Award Agreement. After a loan award has been approved, a written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, and the company or business enterprise receiving the loan award. The agreement will specify the amount, the terms and conditions of the loan; the performance objectives and requirements the company will be required to meet; and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, as well as the payroll levels of such jobs. Under the agreement, the staff of the LED or LEDC or their area representatives will oversee or monitor the progress of the project. LED or LEDC will disburse funds to the company, the borrower, in a manner determined by LED or LEDC.

2. Promissory Note. When appropriate, the borrower shall execute an appropriate promissory note containing a promise to pay or repay the loan funds with interest; the rate of such interest to be determined by the LEDC board in its

discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such rate of interest, which rate of interest shall not be less than the then current U.S. Government Treasury Security Rate that coincides with the term or time period of the Loan at the time of the loan award approval, nor more than 2.5 percent above such Treasury Security Rate; and such promissory note may provide for the repayment of such funds on a stated date, or within a stated time, in installments or on demand, as determined by the LEDC board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such repayment terms.

3. Security Interest. When appropriate, and if required by the LEDC board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such security interest, the borrower shall execute an appropriate security instrument or document providing the LEDC and/or LED a security interest in such movable and/or immovable property or any other assets of the borrower as the LEDC board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such security instrument or document to contain all appropriate, usual, customary, and generally accepted Louisiana security provisions.

4. Financed Lease. When appropriate, and if required by the LEDC board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such security interest, the borrower shall execute an appropriate lease for the purpose of financing and providing security for the loan as the LEDC board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such Financed Lease to contain all appropriate, usual, customary, and generally accepted Louisiana lease and security provisions.

5. Examination/Audit of Books, Records and Accounts. LEDC, LED and the state shall retain and shall have the right to examine/audit all books, records and accounts of the borrower and its project at any time and from time to time, as well as all books, records and assets of any and all guarantors.

6. Guaranties. Should the circumstances warrant, and if required by the LEDC board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to the need for any such guaranty, a guaranty or guaranties of the borrower's obligation to pay or repay the loan proceeds or any part thereof, or a guaranty or guaranties of the company's obligations to perform any or all of its performance requirements or obligations under the loan award agreement, shall be required from any person or persons, company, companies, business enterprise, or any public entity or governmental authority.

7. Execution of Documents. If a borrower does not execute the appropriate documentation which has been prepared by the staff of LED or LEDC for the loan award transaction within 60 days after the completed documentation has been forwarded to the borrower, the borrower shall be required to appear before the LEDC board to explain the delay, and the LEDC board shall have the right to reconsider the loan award, and may either withdraw the loan award or grant an extension of time to the borrower.

In the event the borrower does not execute the documentation within the additional time extended to it, the LEDC board, in its discretion, may withdraw the loan award.

#### 8. Funding

a. Eligible project costs may include, but not be limited to, the following:

- i. site (land) and/or building acquisition;
- ii. engineering and architectural expenses related to the project;
- iii. site preparation;
- iv. construction, renovation and/or rebuilding expenses;
- v. building materials;
- vi. purchases or rebuilding of capital machinery and/or equipment having an Internal Revenue Service (IRS) depreciable life of at least seven years. If any such eligible machinery and/or equipment to be financed by the loan award is not to be located on property owned by the borrower, the owners, lessors and lessees of such private or public property shall each execute an appropriate written lien waiver or release allowing representatives of LED or LEDC to enter upon such private or public property and remove therefrom any or all of such machinery and/or equipment at any time either the LED or the LEDC shall determine such to be in its security interest to do so.

b. Project costs ineligible for award funds include, but are not limited to:

- i. recurrent expenses associated with the project, (e.g., operation and maintenance costs);
- ii. company moving expenses;
- iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;
- iv. refinancing of existing debt; and/or
- v. costs related to furniture, fixtures, computers, consumables, transportation equipment, rolling stock, or any machinery and/or of less than seven years.

9. Loan Participation. If and when appropriate, LED or LEDC, as the originator, may share a part or portion of a loan, with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds or may purchase a portion of the loan; or LED or LEDC, as a participant, may share in a part or portion of a loan originated by another lender or other lenders, by providing a portion of the loan funds or by purchasing a portion of the loan; in either of which cases the participant or participants shall share in the proceeds of the loan repayments and interest income, and an appropriate Loan Participation Agreement shall be executed between the lenders designating the shares of the parties, outlining the various rights and responsibilities of the parties, providing for the servicing/collecting of the indebtedness, providing for the payment of any fees and reimbursement of any expenses of the servicing party, and containing the usual and customary provisions of such agreements.

B. Allocation of Amount for Loan Awards. Following the appropriation of funds for each fiscal year, the board of directors of LEDC shall allocate, and may revise from time

to time, the amount of such funds available for Economic Development Loan Awards.

1. Regarding the amount of such loan awards, matching funds shall be a consideration; and:

a. the portion of the total project costs financed by the loan award may not exceed:

i. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. 75 percent for projects in parishes with unemployment rates above the statewide average; or

iii. 50 percent for all other projects;

b. other state funds cannot be used as the match for EDLOP funds;

c. all monitoring will be done by the staff of LED or LEDC and/or their regional representatives. Expenditures for monitoring or fiscal agents may be deducted from such loan awards, at the discretion of the LEDC board, considering the recommendation of the secretary and/or the staff of the LED or the LEDC as to such deductions;

d. the loan award amount shall not exceed 25 percent of the total funds allocated to the loan awards program during a fiscal year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of \$3.1 Million;

e. the LEDC board of directors, in its discretion, considering the recommendation of the secretary and/or the staff of the LED or the LEDC as to the limitation of the amount of such loan awards, may limit the amount of loan awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

2. Resources shall be allocated by the board of directors of LEDC, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, in order to effect the best allocation of resources, based upon the number of projects anticipated to require similar funding and the availability of program funds.

#### C. Conditions for Disbursement of Funds

1. Loan award funds will be available and funded to the borrower pursuant to the loan award agreement following submission of all signed required documentation to LED or LEDC from the company or business enterprise.

##### 2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC board of directors will be considered eligible for such loan awards.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement or loan award agreement (contract) has been agreed upon, signed and executed.

3. Loan award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all required technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed, issued and/or obtained, in the event that such are required in connection with the project; and

c. all other closing conditions specified in the loan award agreement have been satisfied.

4. Awardees will be eligible for the advancement of loan funds after all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. After the awardee has met all such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the loan award agreement, the loan amount may be disbursed to the borrower after the staff of LED or LEDC or its designee has determined, or inspects the project, circumstances or documentation to assure that all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when LED or LEDC has determined, in its discretion, that the benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though 100 percent of all stated conditions of the loan award agreement may not have been fully met or achieved.

D. Withdrawal of Loan Award Funds. The borrower must make the first draw of funds on the loan award within six months from the effective date of the loan award agreement (the effective date being the date the loan award was approved by the LEDC board); otherwise the borrower shall be required to appear before the LEDC board to explain the delay in the project; and should no funds be drawn within an additional three months from the effective date of the loan award agreement, the borrower shall again be required to appear before the LEDC board to explain the delay in the project, and the LEDC board shall have the option and right to reconsider this loan award, and may either withdraw the loan award or grant an extension of time to the borrower. In the event the borrower does not draw any of the loan award funds within the additional time extended to it, the LEDC board, in its discretion, may withdraw the loan award.

#### E. Compliance Requirements.

1. Companies shall be required to submit to LED or to LEDC periodic progress reports, describing the progress toward the achievement of performance objectives and requirements specified in the loan award agreement. Progress reports shall include a review and certification by the company of its timely promissory note payments, and a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments, including number of jobs created and/or retained, and the payroll levels achieved. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by LED or LEDC to support the company's reported progress toward the achievement of performance objectives and employment requirements. Further, LED or LEDC staff shall oversee the timely submission of reporting requirements by the company.

2. In the event a company fails to timely start or to proceed with and/or complete its project, or fails to timely meet its note or installment payment obligations, its performance objectives and/or any employment requirements, including but not limited to the retention or

creation of jobs or the reaching of payroll levels within the time agreed, as specified in its loan award agreement with LED and LEDC, any such acts, omissions or failures shall constitute a default under the award agreement, promissory note, security instrument or agreement, lease or other document or agreement entered into in connection with the loan award, and LED and LEDC shall retain all rights to withhold loan award funds, modify the terms and conditions of the loan award, to reclaim the unpaid balance of all disbursed loan funds from the company and/or foreclose on its security interest, or in its discretion to reclaim only a portion of the disbursed loan funds in an amount commensurate with the scope of the unmet performance objectives and/or requirements and the foregone benefits to the state. In the last instance, reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives and/or requirements, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project. Loan award agreements will contain "clawback" or refund provisions to protect the state in the event of a default.

3. In the event an applicant or company knowingly files a false statement in its application or in a progress report or other filing, the company and/or its representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company or party to an Award Agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC shall notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct, at any time and from time to time, full financial and performance audits of a company and its project, including all relevant accounts, records and documents of the company and/or the guarantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005).

#### **§147. Conflicts of Interest**

A. No member of Louisiana Economic Development Corporation, employee thereof, or employee of the Louisiana Department of Economic Development, nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:912 (April 2005).

Michael J. Olivier  
Secretary

0504#031

### **RULE**

#### **Board of Elementary and Secondary Education**

Bulletin 111 **L**ouisiana School, District, and State  
Accountability System

(LAC 28:LXXXIII.703, 4307, and 4310)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 111 **L**ouisiana School, District, and State Accountability System* (LAC 28:LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components.

These changes take advantage of new flexibility in guidance for No Child Left Behind and address situations that were not considered when the accountability policy was initially written.

#### **Title 28**

#### **EDUCATION**

#### **Part LXXXIII. Bulletin 111 **L**ouisiana School, District, and State Accountability**

#### **Chapter 7. Subgroup Component**

#### **§703. Inclusion of Students in the Subgroup Component**

A. Students that meet the following criteria shall be included in all subgroup component analyses for the AMO status test and reduction of non-proficient students (safe harbor test).

1. - 2. ...

3. Not exempted from testing due to medical illness, death of the student's family member(s), or the student being identified as LEP and in an English-speaking school for less than one full academic year.

B. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 30:1619 (August 2004), repromulgated LR 30:1996 (September 2004), amended LR 30:2256 (October 2004), LR 31:912 (April 2005).

#### **Chapter 43. District Accountability**

#### **§4307. Indicator 3: The Change in LEAP 21 First-Time Passing Rate from One Year to the Next**

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

C. Part B: Improvement in Percentage Passing

1. The high-stakes testing policy changed in 2004 and requires a one-year transition for district accountability.

a. For 2004 this indicator shall be calculated twice and the higher value used for 2004 district scores:

i. using the 2003 high-stakes testing policy (students must score at least Approaching Basic on both ELA and math) to establish the passing rates in 2003 and 2004;

ii. using the 2004 high-stakes testing policy (students must score at least Basic in either ELA or math and at least Approaching Basic in the remaining high-stakes subject) to establish the passing rates in 2003 and 2004.

2. Formula for converting Part B to an index:  $25 * (\text{change in passing rate} + 2)$ .

3. Implications of index for Part B:

a. a two percent increase yields an index of 100;

b. a four percent increase yields an index of 150.

4. The results of Part B shall be limited to a minimum value of "0" and a maximum of "200."

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2756 (December 2003), amended LR 31:912 (April 2005).

### **§4310. Subgroup Component AYP (Adequate Yearly Progress)**

A. - B.1.b.ii. ...

c. Not exempted from testing due to medical illness, death of the student's family member(s), or the student being identified as LEP and in an English-speaking school for less than one full academic year.

B.2. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1447 (July 2004), amended LR 31:913 (April 2005).

Weegie Peabody  
Executive Director

0504#011

## **RULE**

### **Board of Elementary and Secondary Education**

Bulletin 1530 **L**ouisiana's IEP Handbook  
for Students with Disabilities  
(LAC 28:XCVII.305, 307, 311 and 501)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to Bulletin 1530, Louisiana's IEP Handbook for Students with Disabilities. This action is required to change the preschool settings in the *Louisiana Administrative Code*, so the settings reflect the current data settings collected by the federal government for the Individuals with Disabilities Education Act (IDEA).

#### **Title 28**

#### **EDUCATION**

#### **Part XCVII. Bulletin 1530 **L**ouisiana's IEP Handbook for Students with Disabilities**

#### **Chapter 3. Initial IEP Development**

#### **§305. Participants**

A. - A.6.b. ...

7. Other individuals can be invited, at the discretion of the parent or LEA, who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The LEA also must inform the parents of the right of both the parents and the agency to invite other individuals who have knowledge or special expertise regarding the child, including related service personnel as appropriate to be members of the IEP team. The LEA may recommend the participation of other persons when their involvement will assist the decision-making process.

a. It is also appropriate for the agency to ask the parents to inform the agency of any individuals the parents will be taking to the meeting. Parents are encouraged to let the agency know whom they intend to take. Such cooperation can facilitate arrangements for the meeting and help ensure a productive, child-centered meeting.

b. The determination of the knowledge or special expertise of any individual described above shall be made by the parent or LEA, whoever invited the individual to be a member of the IEP team.

c. When the LEA responsible for the initial IEP/placement process considers referring or placing the student in another LEA, the responsible LEA must ensure the participation of a representative of the receiving system at the IEP meeting.

d. The LEA must ensure the attendance of a representative of a private school if the student is voluntarily enrolled in a private school. If the representative cannot attend, the local education agency shall use other methods to ensure participation by the private school or facility, including individualized or conference telephone calls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1464 (July 2004), amended LR 31:913 (April 2005).

### **§307. Placement Decisions**

A. - A.6.f. ...

7. the measurable annual goals, including benchmarks or short-term objectives, related to:

a. meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum;

b. meeting each of the student's other educational needs that result from the student's disability; and

c. appropriate activities for the preschool aged student;

d. IEP teams may continue to develop short-term instructional objectives or, as an alternative, develop benchmarks that should be thought of as describing the amount of progress the student is expected to make within specified segment of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP team may use either short-term objectives or a combination of the two, depending on the nature of the annual goals and needs of the child.

A.8 - B.3.e. ...

4. For Students Aged 3-5. In determining the appropriate setting for a preschool aged student, each noted setting must be considered; but the list should not be considered a continuum of least restrictive environment. The

settings for preschool-aged students, three through five years, are defined as follows.

a. Early Childhood Setting. Students receive all of their special education and related services in educational programs designed primarily for children without disabilities. No education or related services are provided in separate special education settings. This may include, but is not limited to:

- i. regular kindergarten classes;
- ii. public or private preschools;
- iii. Head Start Centers;
- iv. child care facilities;
- v. preschool classes offered to an eligible pre-kindergarten population by the public school system;
- vi. home/early childhood combinations;
- vii. home/Head Start combinations; and
- viii. other combinations of early childhood settings.

b. Early Childhood Special Education Setting. Students receive all of their special education and related services in educational programs designed primarily for children with disabilities housed in regular school buildings or other community-based settings. No education or related services are provided in early childhood settings. This may include, but is not limited to:

- i. special education classrooms in regular school buildings;
- ii. special education classrooms in child care facilities;
- iii. hospital facilities on an outpatient basis, or other community-based settings; and
- iv. special education classrooms in trailers or portables outside regular school buildings.

c. Home. Students receive all of their special education and related services in the principal residence of the child's family or caregivers.

d. Part-Time Early Childhood/Part-Time Early Childhood Special Education Setting. Students receive services in multiple settings, such that: (1) general and/or special education and related services are provided at home or in educational programs designed primarily for children without disabilities, and (2) special education and related services are provided in programs designed primarily for children with disabilities. This may include, but is not limited to:

- i. home/early childhood special education combinations;
- ii. Head Start, child care, nursery school facilities, or other community-based settings with special education provided outside of the regular class;
- iii. regular kindergarten classes with special education provided outside of the regular class; and
- iv. separate school/early childhood combinations.

e. Residential Facility. Students receive all of their special education and related services in publicly or privately operated residential schools or residential medical facilities on an inpatient basis. This may include, but is not limited to:

- i. hospitals; and
- ii. nursing homes.

f. Separate School. Students receive all of their special education and related services in educational

programs in public or private day schools designed specifically for children with disabilities.

g. Itinerant Service Outside the Home. Students receive all of their special education and related services at a school, hospital facility on an outpatient basis or other location for a short period of time (no more than three hours per week). (This does not include children who receive services at home for three hours or less per week. This would be included in the home setting.) These services may be provided individually or to a small group of children. This may include, but is not limited to: speech instruction, APE and assistive technology up to three hours per week in a school, hospital, or other community-based setting. (A combination of services may not exceed three hours per week). Children receiving all of their special education and related services at a school, hospital facility on an outpatient basis, or other location for longer than three hours per week must be reported under early childhood special education setting or early childhood setting, depending on whether the program was designed primarily for students with or without disabilities.

h. Reverse Mainstream Setting. Students receive all of their special education and related services in educational programs designed primarily for children with disabilities, but that include 50 percent or more children without disabilities.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1466 (July 2004), amended LR 31:913 (April 2005).

### §311. Related Services Decisions

A. - B.2. ...

3. explain delays in providing any related service listed on the IEP.

a. This delay, or hardship, in no way relieves a system from providing the service and from documenting every effort to provide it in a timely manner.

b. The participation of related service personnel is extremely important during the IEP meeting. Involvement should be through either direct participation or written recommendations.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1468 (July 2004), amended LR 31:914 (April 2005).

## Chapter 5. Review IEP Development

### §501. Responsibilities and Timelines

A. - D.6. ...

7. an out-of-district placement or referral is being proposed:

a. a review IEP meeting must be conducted as part of the reevaluation process;

b. in the cases listed above, it may not be necessary to rewrite the entire IEP/placement document. However, the following documentation must be provided:

- i. signatures of the team members;
- ii. the date of the meeting;
- iii. the changes made in the IEP; and

iv. the dated signatures of the official designated representative of the system and the parent who authorized the change.

D.7.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1469 (July 2004), amended LR 31:914 (April 2005).

Weegie Peabody  
Executive Director

0504#012

## RULE

### Board of Elementary and Secondary Education

Bulletin 1872 **C** Extended School Year Program Handbook  
(LAC 28:LVII.Chapters 3 and 5)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, Board of Elementary and Secondary Education adopted revisions to Bulletin 1872, *Extended School Year Program Handbook*. The *Extended School Year Program (ESYP) Handbook* is the regulatory guidance for the provision of special education and related services to students with disabilities in accordance with an Individualized Education Program beyond the normal school year of the LEA and at no cost to the parents of the student. The publication as a Notice of Intent was necessary because the handbook has been codified. Louisiana's Extended School Year Handbook provides information regarding guidelines related to the eligibility of students for extended school year programming and planning considerations, and district responsibilities. The legal basis for extending the school year for certain students with disabilities is stated in §447 of *Bulletin 1706: Regulations for Implementation of the Children with Exceptionalities Act* (R.S.17:1941 et seq.) and the regulations governing the Individuals with Disabilities Education Act (IDEA), 34 CFR §300.309. These decisions have reaffirmed the federal legislative intent to ensure an appropriate education based on the student's needs and on the individually designed educational program to meet those needs.

#### Title 28

#### EDUCATION

#### Part LVII. Bulletin 1872 **C** Extended School Year Program Handbook

#### Chapter 3. Program Standards

#### §301. Overview

A.1. The extended school year program standards must be used in the development, implementation, and evaluation of ESYP. The standards encompass four major components of extended school year programming:

- a. eligibility determination;
- b. planning;
- c. implementation; and
- d. evaluation.

2. Components and accompanying standards are listed in §303, §305, §307 and §309.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1997 (September 2004), amended LR 31:915 (April 2005).

#### Chapter 5. Eligibility Determination Procedures

#### §501. Overview

A. The ESYP Eligibility Criteria must be used in determining eligibility for extended school year services. Students who meet the following conditions prior to the ESYP screening date must be screened annually to determine their eligibility for ESYP:

1. are ages 3-21<sup>1</sup>;
2. are classified with a disability according to the *Pupil Appraisal Handbook*;
3. have a current evaluation; and
4. have a current IEP.

B. ...

C. The screening process is actually the ongoing process of instruction and assessment of student performance and/or data collection throughout the regular school year.

<sup>1</sup>The student's 3rd birthday is prior to the screening date or their 22nd birthday is after the screening date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1998 (September 2004), amended LR 31:915 (April 2005).

#### §503. Annual IEP

A. ...

1. Regression-Recoupment Criterion should be considered for any student expected to have a problem with recoupment of skills. A regression-recoupment problem exists if following breaks in instruction there is a pattern of regression without timely recoupment in the performance of objectives most essential to the student's overall functioning. The Regression Recoupment Criterion may be used for any student receiving special education services but must be used for students classified with moderately mentally disabled, severely mentally disabled, profoundly mentally disabled, deaf blind, autism, multi-disabled, traumatic brain injury, and preschool students with disabilities.

A.2. - C.2'. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1998 (September 2004), amended LR 31:915 (April 2005).

#### §507. Screening and Decisions Regarding ESYP Eligibility [Did the Student Meet Criteria for ESYP?]

A. The teacher collects data relevant to make a determination for ESYP eligibility. Prior to the screening date, other team members with data and department mandated forms related to student eligibility for ESYP must submit the data to the teacher with primary responsibility for IEP development.

B. The teacher/instructional personnel must review data related to making eligibility decisions no earlier than March 15 each year; the last date for making eligibility decisions is the screening date (the first Friday after Easter). The ESYP screening date is the date by which all screening must be completed and preliminary eligibility determinations must be made. Between March 15 and the ESYP screening date (the Friday after Easter) the student's teacher and/or

instructional personnel examine student performance data and determine whether the student's data meet criteria for ESYP eligibility or not.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1999 (September 2004), amended LR 31:915 (April 2005).

#### **§509. Required Documentation**

A. ...

B. There are eleven mandatory forms:

1. ESY-IEP;
2. ESYP Fact Sheet provided to the parents at the annual IEP meeting;
3. ESYP Screening Determination Form. The teacher should complete and submit the ESYP Screening Determination Form to the Director/Supervisor of Special Education by the ESYP screening date; and
4. the Regression-Recoupment Summary Form (used for students considered under Regression-Recoupment criterion);
5. the Critical Point of Instruction Documentation Form;
6. the Self-Injurious Behavior Documentation Form;
7. the Employment Criterion Documentation Form;
8. the Transition Criterion Documentation Form;
9. the Excessive Absences/Late Entry Documentation Form;
10. the Letter of Eligibility and Schedule ESY IEP Meeting;
11. the Letter of Ineligibility.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1999 (September 2004), amended LR 31:916 (April 2005).

#### **§511. Parental Notification and ESY-IEP**

A. The teacher should send the parents written notification of the screening results within 5 business days of the ESYP screening date. For students whose data do not support eligibility, photocopies of the department mandated forms related to the eligibility criterion used for screening should be enclosed in the notification letter.

B. For students whose data support eligibility for the ESYP, an ESY IEP is scheduled (not necessarily held) within 15 business days after the ESYP screening date. Every effort must be made to obtain parental participation. The same procedures are followed as for a review IEP (*Bulletin 1706*, §442 and §443). If parental participation cannot be obtained, the ESY IEP is developed and the parent(s)/guardian are notified and sent copies of documents.

C. For students whose screened data do not support eligibility for ESYP, and the parent(s) disagrees with the preliminary eligibility determination, a meeting of the IEP team should be held to review the data regarding ESYP eligibility. If the data indicate the student is eligible or there is insufficient data to make a determination, the ESY-IEP should be developed. If the data supports the initial screening assessment and preliminary determination (i.e., ineligible), the parent has the right to appeal the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2000 (September 2004), amended LR 31:916 (April 2005).

#### **§521. Critical Point of Instruction Criterion**

A. - C.3.b.iii.(e). ...

4. Required Documentation

a. Critical Point 1:

i. - ii. ...

iii. Critical point of instruction documentation form found on file at the department.

b. Critical Point 2:

i. - iv. ...

v. Critical point of instruction documentation form found on file at the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2001 (September 2004), amended LR 31:916 (April 2005).

#### **§523. Self-Injurious Behavior**

A. - C.4.e. ...

f. Self-Injurious Behavior Documentation Form found on file at the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2002 (September 2004), amended LR 31:916 (April 2005).

#### **§525. Employment**

A. - C.4.c. ...

d. Employment criterion documentation form found on file at the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2003 (September 2004), amended LR 31:916 (April 2005).

#### **§527. Transition**

A. - C.4.b. ...

c. Transition Documentation Form found on file at the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2004 (September 2004), amended LR 31:916 (April 2005).

#### **§529. Excessive Absences**

A. - D.5.c. ...

d. Excessive absences/late entry documentation form found on file at the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2004 (September 2004), amended LR 31:916 (April 2005).

#### **§531. Late Entry Into School**

A. - C.4.c. ...

d. Excessive absences/late entry documentation form found on file at the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2005 (September 2004), amended LR 31:916 (April 2005).



**§533. Extenuating Circumstances**

A. - D.3. ...

4. A student has an assistive technology device and it is essential for that student to use the system/technology through the summer to maintain his/her functioning level of the device.

5. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2005 (September 2004), amended LR 31:917 (April 2005).

**§535. Review of Screening/Eligibility Determination**

A. - C.1. ...

2. once the decision has been made, the teacher should:

a. by the fifth business day after the ESYP screening date, send the parent(s)/legal guardian a written notice of whether the student is eligible or ineligible (Sample letters on file at the department). For students whose data do not support eligibility, photocopies of the department mandated ESYP criteria documentation forms related to the eligibility criterion used for making the preliminary determination should be enclosed in the notification letter (Sample forms on file at the department).

C.2.b. - D. ...

E. For students with a preliminary determination of ineligible and for whom the parents/legal guardians have questions or disagree, the teacher should schedule and hold a meeting with the IEP team to review the decision. This should be documented on the ESYP IEP by indicating whether the meeting was requested either by the parent or by school personnel to review or determine eligibility for extended school year services. The IEP team should indicate the student's ESYP eligibility status. If the parent continues to disagree with the LEA decision they may exercise their rights by initiating procedures in Louisiana's Educational Rights of Children with Exceptionalities in Public Schools. Complaint procedures and final decisions and results will be finalized in an expedited manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2006 (September 2004), amended LR 31:917 (April 2005).

Weegie Peabody  
Executive Director

0504#014

**RULE**

**Board of Elementary and Secondary Education**

**Textbook Adoption Standards and Procedures  
(LAC 28:I.919)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to Chapter 9 (LAC 28:I). The *Louisiana Administrative Code* should contain regulatory policies and procedures germane to the conduct of BESE Board business. We are in the process of removing Sections that either contain no regulatory language, the programs they

refer to no longer exist, or the language will be transferred to or is already contained in the appropriate regulatory bulletin. The Sections we are removing will not have an effect on the way BESE conducts board business or the regulatory procedures or language used to oversee any programs.

**Title 28**

**EDUCATION**

**Part I. Board of Elementary and Secondary Education**

**Chapter 9. Bulletins, Regulations, and State Plans**

**Subchapter A. Bulletins and Regulations**

**§919. Textbook Adoption Standards and Procedures**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(9); R.S. 17:8, 8.1; R.S. 17:22(2)(e); R.S. 17:351; R.S. 17:352; R.S. 17:391.10; R.S. 392.4(D)(6); R.S. 17:415.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 2:110 (April 1976); LR 3:445 (November 1977), LR 4:76 (March 1978), LR 6:257 (June 1980), LR 7:43, 407 (February, August 1981), LR 8:7, 143 (January 1982), LR 9:321, 548, 836 (May, August, December 1983), LR 10:76, 495 (February, July 1994), LR 11:7, 949 (January, September 1985), LR 12:14, 511 (January, August 1986), LR 13:496 (September 1987), LR 14:248 (April 1988), LR 15:621, 962 (August, November 1989), amended LR 16:297, 957 (April, November 1990), LR 10:255, 955 (March, September 1992), LR 21:552, 1329 (June, December 1995), LR 24:434 (March 1998), LR 25:1436-1458 (August, 1999), LR 26:991-1015 (May, 2000), LR 28:2329 (November 2002), LR 29:124-125 (February 2003), repealed LR 31:917 (April 2005).

Weegie Peabody  
Executive Director

0504#013

**RULE**

**Department of Environmental Quality  
Office of Environmental Assessment**

**Designated Uses and Criteria for Cypress Island Coulee  
Wetland (LAC 33:IX.1123)(WQ059)**

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.1123 (Log #WQ059).

The Rule establishes Cypress Island Coulee Wetland as subsegment 060806, located west of St. Martinville. Site-specific criteria and designated uses have been established for Cypress Island Coulee Wetland based on a scientific study conducted from February 2003 to August 2004. Results of the study are summarized in a Use Attainability Analysis (UAA) report entitled "St. Martinville Wetland Wastewater Assimilation Use Attainability Analysis." LAC 33:IX.1123 contains numerical criteria and designated uses of water bodies and is being revised to include Cypress Island Coulee Wetland, subsegment 060806. A UAA with supportive technical rationale has been developed that supports the implementation of a wastewater discharge and assimilation in Cypress Island Coulee Wetland. This action is required to establish site-specific criteria and designated uses for Cypress Island Coulee Wetland in the Water Quality Standards. The UAA characterized the chemical, physical, and biological factors of Cypress Island Coulee Wetland.

Also included in the UAA are water quality analysis, sediment characterization, vegetation composition, hydrology, and productivity analysis. This data establishes base conditions and criteria to support water uses in the Cypress Island Coulee Wetland.

According to the regulations, a UAA is defined as a structured scientific assessment of the factors (chemical, physical, biological, and economic) affecting the attainment of designated uses in a water body. [See 40 CFR 131.3(g) and LAC 33:IX.1105.] The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to establish site-specific uses and criteria. The basis and rationale for this Rule are to establish numerical criteria for the new Cypress Island Coulee Wetland, subsegment 060806, based on the Use Attainability Analysis.

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 1. Water Pollution Control**

**Chapter 11. Surface Water Quality Standards**

**§1123. Numerical Criteria and Designated Uses**

A. - C.2. ...

3. Designated Uses. The following are the category definitions of designated uses that are used in Table 3 under the subheading "Designated Uses."

- A **C** Primary Contact Recreation
- B **C** Secondary Contact Recreation
- C **C** Fish and Wildlife Propagation
- L **L** Limited Aquatic Life and Wildlife Use
- D **C** Drinking Water Supply
- E **O** Oyster Propagation
- F **A** Agriculture
- G **O** Outstanding Natural Resource Waters

Numbers in brackets, e.g. [1], refer to endnotes listed at the end of the table.

Table 3. Numerical Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish and Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
*** [See Prior Text in 010101 – 050901]									
<b>Vermillion-Teche River Basin (06)</b>									
*** [See Prior Text in 060101 – 060805]									
060806	Cypress Island Coulee Wetland—Forested wetland located in St. Martin Parish, 2 miles west of St. Martinville, 0.5 mile north of La. Hwy. 96, west of Bayou Teche and east of the Vermilion River	BC	[23]	[23]	[23]	[23]	2	[23]	[23]
*** [See Prior Text in 060901 – 120806]									

**ENDNOTES:**

[1] – [24] ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:1474 (July 2004), amended by the Office of Environmental Assessment, LR 30:2468 (November 2004), LR 31:918 (April 2005).

Wilbert F. Jordan, Jr.  
Assistant Secretary

0504#025

**RULE**

**Department of Environmental Quality  
Office of Environmental Assessment**

Incorporation by Reference **C**2004  
(LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517)(OS062\*)

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 Environmental Quality regulations, LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517 (Log #OS062\*).

This Rule is identical to federal regulations found in 10 CFR 71, Appendix A (1/1/2004) & 40 CFR Parts 117.3, 136, 266, Appendices I-IX & XI-XIII, 302.4, 401, and 405-471 (7/1/2004), and 40 CFR Parts 429.11(c) in 69 FR 46045

(7/30/2004), 432 in 69 FR 54541-54555 (9/8/2004), and 451 in 69 FR 51927-51930 (8/23/2004), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4314, Baton Rouge, LA 70821-4314. 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 into LAC 33:Parts I, V, IX, and XV the corresponding regulations in 10 CFR 71, Appendix A, January 1, 2004 and 40 CFR Parts 117.3, 136, 266, Appendices I-IX and XI-XIII, 302.4, 401, and 405-471, July 1, 2004, and amendments to 40 CFR 429.11(c) in 69 FR 46045, July 30, 2004, 40 CFR 432 in 69 FR 54541-54555, September 8, 2004, and 40 CFR 451 in 69 FR 51927-51930, August 23, 2004. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA. This incorporation by reference Rule will keep Louisiana's regulations current with their federal counterparts. The basis and rationale for this rule are to mirror the federal regulations in order to maintain equivalency.

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

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part I. Office of the Secretary**

#### **Subpart 2. Notification**

### **Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges**

#### **Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges**

##### **§3931. Reportable Quantity List for Pollutants**

A. Incorporation by Reference of Federal Regulations. Except as provided in Subsection B of this Section, the following federal reportable quantity lists are incorporated by reference:

1. 40 CFR 117.3, July 1, 2004, Table 117.3 Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

2. 40 CFR 302.4, July 1, 2004, Table 302.4 List of Hazardous Substances and Reportable Quantities.

B. - Note #. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:751 (April 2004), LR 30:1669 (August 2004), amended by

the Office of Environmental Assessment, LR 31:919 (April 2005).

## **Part V. Hazardous Waste and Hazardous Materials**

### **Subpart 1. Department of Environmental**

#### **Quality Hazardous Waste**

### **Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces**

#### **§3099. Appendices Appendix A, B, C, D, E, F, G, H, I, J, K, and L**

##### **Appendix A. Tier I and Tier II Feed Rate and Emissions Screening Limits For Metals**

A. 40 CFR 266, Appendix I, July 1, 2004, is hereby incorporated by reference.

##### **Appendix B. Tier I Feed Rate Screening Limits for Total Chlorine**

A. 40 CFR 266, Appendix II, July 1, 2004, is hereby incorporated by reference.

##### **Appendix C. Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride**

A. 40 CFR 266, Appendix III, July 1, 2004, is hereby incorporated by reference.

##### **Appendix D. Reference Air Concentrations**

A. 40 CFR 266, Appendix IV, July 1, 2004, is hereby incorporated by reference, except that in regulations incorporated thereby, references to 40 CFR 261, Appendix VIII and 266, Appendix V shall mean LAC 33:V.3105, Table 1 and LAC 33:V.3099.Appendix E, respectively.

##### **Appendix E. Risk-Specific Doses (10<sup>-5</sup>)**

A. 40 CFR 266, Appendix V, July 1, 2004, is hereby incorporated by reference.

##### **Appendix F. Stack Plume Rise [Estimated Plume Rise (in Meters) Based on Stack Exit Flow Rate and Gas Temperature]**

A. 40 CFR 266, Appendix VI, July 1, 2004, is hereby incorporated by reference.

##### **Appendix G. Health-Based Limits for Exclusion of Waste-Derived Residues**

A. 40 CFR 266, Appendix VII, July 1, 2004, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII, 266.112(b)(1) and (b)(2)(i), and 268.43 shall mean LAC 33:V.3105, Table 1, 3025.B.1 and B.2.a, and LAC 33:V.2299.Appendix, Table 2, respectively.

##### **Appendix H. Organic Compounds for Which Residues Must Be Analyzed**

A. 40 CFR 266, Appendix VIII, July 1, 2004, is hereby incorporated by reference.

##### **Appendix I. Methods Manual for Compliance with the BIF Regulations**

A. 40 CFR 266, Appendix IX, July 1, 2004, is hereby incorporated by reference, except as follows.

A.1. - B. ...

##### **Appendix J. Lead-Bearing Materials That May Be Processed in Exempt Lead Smelters**

A. 40 CFR 266, Appendix XI, July 1, 2004, is hereby incorporated by reference.

##### **Appendix K. Nickel or Chromium-Bearing Materials That May Be Processed in Exempt Nickel-Chromium Recovery Furnaces**

A. 40 CFR 266, Appendix XII, July 1, 2004, is hereby incorporated by reference, except that the footnote should be deleted.

**Appendix L. Mercury-Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units**

A. 40 CFR 266, Appendix XIII, July 1, 2004, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII shall mean LAC 33:V.3105, Table 1.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:827 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:300 (March 2001), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 30:751 (April 2004), amended by the Office of Environmental Assessment, LR 31:919 (April 2005).

**Part IX. Water Quality**

**Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**

**Chapter 23. Definitions and General LPDES Program Requirements**

**§2301. General Conditions**

A. - E. ...

F. All references to the *Code of Federal Regulations* (CFR) contained in this Chapter shall refer to those regulations published in the July 1, 2004 CFR, unless otherwise noted.

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 23:199 (February 1997), LR 23:722 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005).

**Chapter 49. Incorporation by Reference**

**§4901. 40 CFR Part 136**

A. 40 CFR Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 2004, in its entirety, is hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular 2074(B)(3) and (4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005).

**§4903. 40 CFR Chapter I, Subchapter N**

A. 40 CFR Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2004, and amendments to Section 429.11(c) in 69 FR 46045, July 30, 2004, Part 432 in 69 FR 54541-54555, September 8, 2004, and Part 451 in 69 FR 51927-51930, August 23, 2004, are hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945

(September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005).

**Part XV. Radiation Protection**

**Chapter 15. Transportation of Radioactive Material**

**§1517. Incorporation by Reference**

A. The department incorporates by reference 10 CFR Part 71, Appendix A, January 1, 2004.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), amended LR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:701 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005).

Wilbert F. Jordan, Jr.

Assistant Secretary

0504#023

**RULE**

**Department of Environmental Quality  
Office of Environmental Assessment**

Numerical Criterion of Sulfates  
for Bayou Anacoco Subsegment 110507  
(LAC 33:IX.1123)(WQ058)

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.1123 (Log #WQ058).

The Rule revises the numerical criterion of sulfates from 200 milligrams per liter (mg/L) to 300 mg/L that applies to Bayou Anacoco subsegment 110507, in the Sabine River Basin. LAC 33:IX.1123 contains numerical criteria and designated uses of water bodies, including Bayou Anacoco subsegment 110507. A Use Attainability Analysis (UAA) was conducted on Bayou Anacoco subsegment 110507 to determine the uses and criteria the water body can attain. According to the regulations, a UAA is defined as "a structured scientific assessment of the factors (chemical, physical, biological, and economic) affecting the attainment of designated uses in a water body." (See 40 CFR 131.3(g) and LAC 33:IX 1105.) The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to establish site-specific uses and criteria. The UAA for Bayou Anacoco characterizes the chemical, physical, and biological factors of Bayou Anacoco. Also included in the UAA is historic information related to sulfate loading issues in Bayou Anacoco. Based on the information gathered in the UAA, increasing the sulfate numerical criterion from 200 to 300 mg/L will maintain and protect the designated uses of primary or secondary contact recreation and propagation of fish and wildlife for Bayou

Anacoco. The basis and rationale for the Rule are to establish new site-specific numerical criterion of sulfates that applies to Bayou Anacoco subsegment 110507, based on the Use Attainability Analysis.

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 1. Water Pollution Control**  
**Chapter 11. Surface Water Quality Standards**  
**§1123. Numerical Criteria and Designated Uses**  
A. - C.2. ...

3. Designated Uses. The following are the category definitions of designated uses that are used in Table 3 under the subheading "Designated Uses."

- A **C** Primary Contact Recreation
- B **C** Secondary Contact Recreation
- C **C** Fish and Wildlife Propagation
- L **C** Limited Aquatic Life and Wildlife Use
- D **C** Drinking Water Supply
- E **C** Oyster Propagation
- F **C** Agriculture
- G **C** Outstanding Natural Resource Waters

Numbers in brackets, e.g. [1], refer to endnotes listed at the end of the table.

<b>Table 3. Numerical Criteria and Designated Uses</b>									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish and Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
* * *									
[See Prior Text in 010101 – 101607]									
<b>Sabine River Basin (11)</b>									
* * *									
[See Prior Text in 110101 – 110506]									
110507	Bayou Anacoco—From Cypress Creek to Sabine River Confluence	ABC	150	300	5.0	6.0-8.5	1	32	1,000
* * *									
[See Prior Text in 110601 – 120806]									

ENDNOTES:

[1] – [24] ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:1474 (July 2004), amended by the Office of Environmental Assessment, LR 30:2468 (November 2004), LR 31:921 (April 2005).

Wilbert F. Jordan, Jr.  
Assistant Secretary

0504#024

**RULE**

**Office of the Governor**  
**Motor Vehicle Commission**

Motor Vehicle Sales Finance  
(LAC 46:V.Chapters 71-79)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., Revised Statutes Title 32, Chapter 6, and Revised Statutes Title 6, Chapter 10-B, the Office of the Governor, Louisiana Motor Vehicle Commission, the Louisiana Motor Vehicle Commission has

adopted rules and regulations governing the providers of credit in the financing of motor vehicles in accordance with R.S. 6:696.1 et seq., thus providing guidance as to the application for the Motor Vehicle Sales Finance Act.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part V. Automotive Industry**  
**Subpart 3. Motor Vehicle Sales Finance**  
**Chapter 71. General Provisions**

**§7101. Louisiana Motor Vehicle Commission**

A. The Louisiana Motor Vehicle Sales Finance Act is administered by the Louisiana Motor Vehicle Commission.

B. The office and domicile of the Louisiana Motor Vehicle Commission is 3519 Twelfth Street, Metairie, LA 70002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:921 (April 2005).

**§7103. Definitions**

*Chapter* **C**R.S. 6:969.1 et seq.

*Commission* **C**Louisiana Motor Vehicle Commission.

*Consumer Credit Sale* **C**the sale of a motor vehicle on credit under which the seller acquires a purchase money security interest in the purchased vehicle, and incident to which a credit service charge is charged and the consumer is permitted to defer all or part of the purchase price or other consideration in two or more installments excluding the down payment. A *consumer credit sale* does not include a lease of a motor vehicle under any circumstance, whether or

not the lease constitutes a true lease or financed lease within the context of the Louisiana Lease of Movables Act, R.S. 9:3301 et seq. A consumer credit sale may be secured by other collateral in addition to the purchased vehicle.

**Consumer Loan** A loan of money or its equivalent made by a lender, the proceeds of which are used by the consumer to purchase or refinance the purchase of a motor vehicle, or which proceeds are used for personal, family, or household purposes, including debts created by the use of a lender credit card, revolving loan account, or similar arrangement, as well as insurance premium financing, with the lender acquiring a purchase money security interest in the purchased motor vehicle. A consumer loan may be secured by other collateral in addition to the purchased vehicle. The provisions of this Paragraph shall not apply to a consumer loan made pursuant to the Louisiana Deferred Presentment and Small Loan Act, R.S. 9:3578.1 et seq.

**Person** An individual or corporation, partnership, limited liability company, trust, association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 6:969.40(D).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:921 (April 2005).

## **Chapter 73. Licensing**

### **§7301. License Requirement and Exception**

A.1. No person unless exempt from licensing under R.S. 6:969.36 shall engage in the business of:

a. making consumer loans or the origination of consumer credit sales;

b. taking assignments of and undertake direct collection of payments from or enforcing rights against consumers under a consumer loan or consumer credit sale;

2. without first filing an application, paying a non-refundable application fee and obtaining a license from the commission. An assignee may, however, collect and enforce consumer obligations of which it has taken assignment for three months without a license if the assignee notifies the commission in writing, the assignee promptly applies for a license, and the application is not rejected.

B. A license is required whether or not the applicant has one or more offices in this state.

C. A license is required for each office maintained in this state. If a licensee makes direct consumer loans to consumers at a seller's location, that location is not deemed to be a branch office of the lender.

D. All of the following shall be exempt from the licensing requirements of this Chapter:

1. supervised financial organizations;

2. trusts and trustee, including without limitation securitization trusts and trustees;

3. assignees with no offices in this state holding motor vehicle contracts on an interim basis for a period of 90 days or less;

4. governmental agencies, instrumentalities, or public entities organized by Act of Congress or the Legislature of Louisiana;

5. qualified pension plans when entering into an extension of credit to a plan participant;

6. bona fide pledges of motor vehicle credit contracts;

7. persons holding motor vehicle contracts for servicing or collection on behalf of the actual owner of such obligations;

8. licensed new motor vehicle dealers to the extent that they regularly sell, assign, and transfer contracts originated by them to third party assignees within 60 days following origination. A licensed new motor vehicle dealer may retain at any one time, and from time to time thereafter, a maximum of 12 contracts for its own account without being subject to the licensing requirements of this Chapter.

E. The commission may waive the licensing and examination requirements for a subsidiary of an entity as described in Paragraph D.1.

F. The application shall be in writing, under oath, and in the form prescribed by the commission. The application shall contain: the name of the applicant; date of incorporation, if incorporated, date of formation if a partnership or limited liability company or other entity; the address where the business is to be conducted and similar information as to any branch office of the applicant in this state; the name and resident address of the owner, members or partners or, if a corporation or association, of the directors, trustees, and principal officers; and such other pertinent information as the commission may require to make an evaluation of the applicant.

G. No license shall be issued unless the commission, upon investigation, finds that the financial responsibility, business integrity and ability to properly conduct the business by the applicant's owner, partners if the applicant is a partnership, members if the applicant is a limited liability company, officers and directors if the applicant is a corporation, and the applicant if a sole proprietorship are such to warrant a belief that the business shall be conducted honestly and fairly within the purposes of this Chapter and they each meet the following requirements:

1. be 18 years of age or older and a citizen of the United States or a resident alien holding proper documentation to work in the United States;

2. be of good character and fitness; and

3. not been convicted of a felony in the previous ten years, notwithstanding that the conviction was expunged, set aside, or received a first offense pardon. The only felony conviction which shall not be considered for purposes of this Chapter is one which received a governor's or presidential pardon.

H. No license shall be issued in any name other than its legal name or assumed name properly filed in accordance with the statutes of this state and set forth in the license application. No license shall be issued in any name which may be confused with or which is similar to any federal, state, parish, or municipal governmental function or agency, or in any name which may tend to describe any business function or enterprise not actually engaged in by the applicant, or in any name which is the same as or so similar to that of any existing license as would tend to deceive the public, or in any name which would otherwise tend to be deceptive or misleading.

I. Each license expires December 31 and must be renewed annually by the licensee.

J. No license shall be sold or otherwise transferred.

K. A licensee shall give the commission 30 days prior written notice of any location change.

L. A licensee shall notify the commission in writing within 30 days after ceasing to do business in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:922 (April 2005).

### **§7303. Denial of License**

A. The applicant shall be entitled to a hearing on the question of his qualifications for a license if the applicant requests such in writing to the commission and either of the following have occurred.

1. The applicant has received notification from the commission that his application has been denied.

2. The commission has not issued to the applicant a license and it has been 60 days since the date that the application for the license was filed with the commission.

B. The denial notice from the commission to the applicant shall be in writing and shall state, in substance, the commission's findings supporting the denial of the application. Such notice shall be sent certified mail, return receipt requested, to the primary business address on the application.

C. A request for a hearing based on the denial of an application must be received by the commission, in writing, within 15 days of the date that the commission mailed the denial notice to the applicant.

D. Upon receipt of the request for a hearing, the commission shall give the applicant at least 30 days written notice of the time and place of such hearing by certified mail addressed to the primary business address on the application.

E. The hearing will be conducted in accordance with the Administrative Procedure Act and the rules and regulations of the commission.

F. Within 30 days after a denial or revocation of a license, the licensee may apply for a review thereof by application to the district court for the parish of Jefferson in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:923 (April 2005).

### **§7305. Renewal Application**

A. Annually by November 1 each licensee shall file a renewal application and pay a non refundable renewal fee.

1. An annual renewal application received by the commission postmarked after December 1 shall be accompanied by a late filing fee, in addition to the annual renewal fee.

2. If the annual renewal application and renewal fee are not received postmarked by December 31, the license shall lapse without a hearing or notification, and the license shall not be reinstated; however, the person whose license has lapsed may apply for a new license. No new license shall be issued upon the filing of a new application by any person against whom any penalty or late fee has been imposed unless and until such penalty or late fee previously accrued under this Section has been paid, and the commission has determined that the applicant has the requisite qualifications for a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:923 (April 2005).

### **§7307. Suspension, or Revocation of License**

A. Renewal of a license originally granted under this Chapter may be denied or a license may be suspended or revoked by the commission for any of the following grounds:

1. material misstatements in the application for a license;

2. failure to comply with any provision of this Chapter relating to motor vehicle credit transactions;

3. defrauding any consumer purchaser of a motor vehicle to the consumer's damage;

4. fraudulent misrepresentation, circumvention, or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the purchasing consumer under this Chapter.

B. If the licensee is a person, it shall be sufficient cause for the suspension or revocation of a license that any officer, director, trustee, partner, or member of the licensee has so acted or failed to act as would be cause for suspending or revoking the license to such party as an individual.

C. Each licensee shall be responsible for the acts of any and all of its employees while acting as its agent, if such licensee after actual knowledge of such acts retained the benefits, proceeds, profits, or advantages accruing from such acts or otherwise ratified such acts.

D. No license shall be suspended or revoked by the commission except after a hearing in the form of an order to show cause. The commission shall give the licensee at least 30 days written notice of the time and place of such hearing which notice shall contain the grounds for the suspension or revocation of the license. The notice shall be sent by certified mail, return receipt requested, addressed to the primary business address on the application.

E. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the commission and shall not be effective until after 30 days written notice thereof given after such entry forwarded by certified mail to the licensee at such primary business address on the application.

F. No revocation, suspension, or surrender of any license shall impair or affect the obligation under any motor vehicle credit contract or agreement entered into or acquired previously thereto by the licensee.

G. The hearing will be conducted in accordance with the Administrative Procedure Act and the rules and regulations of the commission.

H. Within 30 days after such suspension or revocation of a license, the licensee may apply for a review thereof by application to the district court for the parish of Jefferson in accordance with the Administrative Procedure Act.

I. Prior to the institution of commission proceedings regarding the revocation, suspension, annulment, or withdrawal of a license, when such action must be accomplished pursuant to the Administrative Procedure Act, R.S. 49:950 et seq.

1. The commission shall give notice by mail to the licensee, setting forth the facts or conduct which serve(s) as the commission's basis for such action. The notice shall advise the licensee that he is being offered an opportunity to participate in an informal meeting with a representative of

the commission to show compliance with all lawful requirements for retention of the license, in conformity with R.S. 49:961(C).

2. The licensee shall have 15 calendar days from receipt of such notice to request, in writing, an informal meeting. Such informal meeting shall be held not less than 10 days nor more than 30 days following receipt of the licensee's request for the meeting, unless the commission determines that an extension is warranted.

3. Notwithstanding any other provision of this rule, if the commission finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in an order to the licensee, summary suspension may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:923 (April 2005).

### **§7309. Fees**

A. All fees are non refundable.

B. License application fee per location **☞**\$400.

C. License renewal fee and late penalty per location **☞**\$400; late fee **☞**\$100.

D. Change of location **☞**no charge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:924 (April 2005).

## **Chapter 75. Examination and Record Retention**

### **§7501. Examination**

A. The commission shall have the power to examine all books, records and accounts of all persons licensed under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:924 (April 2005).

### **§7503. Records Retention**

A. Each person required to be licensed under this Chapter shall maintain in its offices such books, records and accounts of its lending activities as the commission may prescribe by policy as required to determine whether such licensee is complying with the provisions of this Chapter and the rules, regulations and policies promulgated under the provisions of this Chapter included by not limited to the following:

1. the original or a copy of all documentation signed by the consumer, including but not limited to:

- a. note;
- b. disclosure statement;
- c. financing statement (or equivalent);

2. individual account of the borrower (ledger card or printable computer screen) showing the following:

- a. amount of loan;
- b. origination date;
- c. repayment terms;
- d. insurance charges, whether sold in connection with the loan or not;
- e. total finance charge;
- f. annual contractual percentage rate;
- g. date, amount and application of each payment;

h. date and amount of late charges assessed;

i. date and amount of deferral charges;

j. remaining unpaid balance;

k. due date of first payment;

l. all changes in due date of payment;

3. all paid out accounts (including those paid out by renewal) must be filed separately and contain the following:

a. interest rebate;

b. itemized rebate of all insurance premiums;

4. accounts turned over to an attorney for collection:

a. amount paid to attorney, including court costs and attorney fees shown as separate charges;

b. receipt from Clerk of Court, evidencing court costs;

5. accounts reduced to judgment:

a. same documents as for attorney accounts;

b. receipt from Clerk of Court, evidencing any additional court costs;

c. copy of signed judgment;

6. death claims:

a. copy of death certificate;

b. copy of all checks or other evidence of payment received from insurance company in payment of claim;

c. copy of check evidencing payment to secondary beneficiary, where applicable;

7. insurance records:

a. copy of master policy for each type of insurance sold to consumers;

b. copy of rates approved by the Insurance Rating Commission, except for those established by the Louisiana Motor Vehicle Sales Finance Law;

c. lenders will be expected to provide proof of compliance as set out by the commissioner of insurance;

d. proof of remittance of premiums to the previous underwriter;

8. paid out accounts containing errors cited at the previous examination:

a. must be separately filed or identified;

b. must contain proof of correction of error, including copies of refund checks issued to consumers;

9. any other records that may be deemed necessary by the commission to determine compliance with the provisions of the Louisiana Motor Vehicle Sales Finance Law.

B. Period for Retention of Records. All records must be retained for at least two years after the account is paid in full, or any insurance coverage remaining in force after the account has been paid has lapsed, unless required by law to be retained for a longer period. Records are required to be kept indefinitely during the pendency of an investigation or enforcement proceedings involving alleged violations.

C. Variance. After considering the particular facts and circumstances of an individual licensed lender's recordkeeping procedures, and the public interest in promoting the efficiency and effectiveness of compliance examinations, the commission may formally grant a variance to a licensed lender to any requirement in this rule.

D. Such books, records, and accounts shall be maintained separate and apart from any other business which the agency is involved. If the licensee's books, records, and accounts are located outside the state, the licensee, at the commission's option, shall make them available to the commission at a location within the state convenient to the



commission, or pay the reasonable and necessary expenses for the commission or its representatives to examine them at the place where they are maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:924 (April 2005).

## **Chapter 77. GAP Coverage**

### **§7701. Definition**

A. GAP coverage covers a consumers deficiency balance between the net payoff of the consumers loan retail installment sales contract at the time of a loss and the amount paid by the consumers primary insurance after a vehicle is deemed a total loss due to any direct or accidental physical damages or unrecovered theft.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:925 (April 2005).

### **§7703. Types of Coverage**

A. Guaranteed Auto Protection (GAP) offered by a Property and Casualty (P&C) company licensed and regulated by the Louisiana Department of Insurance.

B. Guaranteed Auto Protection (GAP) offered by a Property Residual Value Insurer (PRVI) licensed and regulated by the Louisiana Department of Insurance.

C. Debt waiver or debt forgiveness agreements regulated by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:925 (April 2005).

### **§7705. Offer of Coverage**

A. The seller shall and the extender of credit may offer a consumer the option of voluntarily purchasing GAP coverage in a transaction involving a consumer loan or consumer credit sale secured by a motor vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:925 (April 2005).

### **§7707. Debt Waiver or Debt Forgiveness Agreement**

A. Debt waiver or debt forgiveness is an agreement whereby a extender of credit agrees with the consumer to waive any unpaid balance on a consumer loan or consumer credit sale due to a physical damage total loss or constructive loss or unrecovered theft to the covered collateral secured by an eligible security device.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:925 (April 2005).

### **§7709. Insurance Coverage**

A. An extender of credit may insure its debt waiver or debt forgiveness agreement by an insurance company licensed by the Louisiana Department of Insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:925 (April 2005).

### **§7711. Debt Waiver or Debt Forgiveness Requirements**

A. The retail installment sales contract must have an addendum where upon the extender of credit agrees to waive the consumers debt for the difference between the amount

paid by the consumers primary insurance and the net payoff of the contract.

B. There shall be a clear statement in the waiver form that is given to the consumer that the consumers debt is waived. The following is an example:

The extender of credit hereby agrees, by acceptance of this Addendum as an amendment to the Retail Installment Sales Contract upon assignment, to waive the consumers liability for the difference between the amount owed (excluding past due amounts, payment extensions, insurance or other charges) under the consumers retail installment sales contract and the actual cash value of the consumers vehicle as of the date of the total loss of the consumers vehicle resulting from a peril covered by the consumers primary insurance company.

C. The consumer shall have the right to cancel the debt waiver or debt forgiveness agreement and shall be entitled to a refund of the premium paid no less favorable to the consumer than the rule of 78's or pro-rata.

D. The agreement shall contain a statement of how the unpaid net balance is determined. In making this determination, unearned interest, loan charges, late charges, any delinquent payments, any uncollected service charges, refundable prepaid taxes or fees or any other proceeds the consumer may recover by cancelling insurance coverages, service contracts or warranties, disposition fees, termination fees, penalty fees or other items built into or added to the initial loan balance are not covered by the agreement.

E. There shall be no deductible provision in the agreement.

F. There may be a limited waiver of subrogation which shall apply only to sums actually paid or waived on behalf of the consumer.

G. The claim shall be paid within 60 days of the incident or 30 days from filing of the police report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:925 (April 2005).

### **§7713. Filing**

A. No person shall offer for sale a debt waiver or debt forgiveness agreement in this state until its sale materials, agreements, insurance policies and any and all documents used in connection with its offer and sale of such agreements shall be filed with the commission.

B. Within 30 days of the receipt of the filing, the commission will notify the filing party of any additional requirements or grant its approval for the sale of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:925 (April 2005).

## **Chapter 79. Powers of Commission**

### **§7901. Subpoenas and Oaths**

A. The commission shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this Chapter. The commission shall have the power to administer oaths and affirmations to any person whose testimony is required.

B. Whenever a person becomes licensed by the commission, pursuant to this Chapter, such person shall

provide a physical address to the commission that may be used as a basis for service or notification of any order or other issuance or communication by the commission to such person. Whenever such person changes his physical address, it shall notify the commission at least 30 days prior to the change. Notification or service of any order, notice, or other issuance or communication by the commission by certified mail to the address most recently provided to the commission by the person shall satisfy all requisites of service required for any registration, administrative enforcement, or other action, undertaken by the commission pursuant to the Administrative Procedure Act or otherwise, in connection with such person.

C. If any person shall refuse to obey any such subpoena, to give testimony, or to produce evidence thereby, the commission may apply to the 24th Judicial District Court for the Parish of Jefferson for an order awarding process of subpoena or subpoena duces tecum out of the district court for the witness to appear before the commission and to give testimony and to produce evidence as required thereby.

D. If any person served with any such subpoena shall refuse to obey the same and to give testimony and to produce evidence as required there, the commission may apply to the 24th Judicial District Court for the Parish of Jefferson for an attachment against such person, as for a contempt.

E. The commission, if it has reason to believe that any licensee or any other person has violated any of the provisions of this Chapter relating to motor vehicle credit transactions shall have the power to make such investigations as it shall deem necessary and, to the extent necessary for this purpose, the commission may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts and documents.

F. Any consumer having reason to believe that this Chapter relating to the consumer's motor vehicle credit transaction has been violated may file with the commission a written complaint setting forth the details of such alleged violation. The commission, upon receipt of such complaint, may inspect the pertinent books, records, letters of the lessee and of the consumer involved relating to such specific written complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:925 (April 2005).

### **§7903. Cease and Desist Orders**

A. The commission shall have the power to issue cease and desist orders to protect the public welfare.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:926 (April 2005).

### **§7905. Penalties**

A. In addition to any other authority conferred upon the commission by this Chapter the commission may impose fines and penalties against persons violating the provisions of this Chapter and the rules and regulations adopted thereunder.

B. The commission may impose a fine on any person who willfully violates any provision of this Chapter and the

rules and regulations adopted thereunder in an amount not to exceed \$5,000 per violation.

C. The commission may impose a fine on any person who originates or purchases a contract subject to this Chapter of \$1,000 for each contract, who has not first obtained a license from the commission.

D. The commission may render judgment for costs, or any part thereof, against any party to proceedings held or scheduled to be held before the commission as it may consider equitable. These costs shall include but shall not be limited to court reporter fees, commission attorney fees, the mileage and per diem of the commissioners, and other applicable reasonable costs.

E. Any person who is required to be licensed under this Chapter and who fails to timely purchase a license herein provided may be ordered by the commission to pay a penalty of \$100 in addition to the regular license fee herein provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:926 (April 2005).

### **§7907. Advisory Opinions**

A. The commission, its employees and attorneys may issue advisory opinions and interpretations regarding this Chapter. Advisory opinions and interpretations of the commission or its employees and attorneys shall not be considered rules requiring compliance with the rule making process under the Administrative Procedure Act.

B. Any actions taken by an extender of credit pursuant to any opinion or interpretation made by the commission, its officers or attorneys shall not be deemed to be a violation of this Chapter.

C. The commission or its employees and attorneys shall have no liability to any person with respect to the issuance of a ruling or interpretative opinion made under this Chapter.

D. A request for an advisory opinion or interpretation shall be in writing and shall set forth the specific statute or rules and regulations to which the request relates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:926 (April 2005).

### **§7909. Declaratory Orders and Rulings**

A. The commission may issue a declaratory order and ruling pursuant to the Administrative Procedure Act which has the same status as a commission decision or order in an adjudicated case.

B. A request for a declaratory order and ruling shall be made in the form of a petition to the commission. The petition shall include, but shall not be limited, to the following:

1. the name and address of petitioner;
2. specific reference to the statutes or rules and regulations to which it relates;
3. a statement of the manner in which the petitioner is aggrieved by the statute or rule or by its potential application to it, or in which it is uncertain of its effects;
4. a statement of whether an oral hearing is desired;
5. other information appropriate for the commission's deliberation on the request.

C. The petition will be considered by the commission at its next regularly scheduled meeting provided that the petition has been filed at least 30 days prior to that meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:926 (April 2005).

#### **§7911. Cooperative and Reciprocal Agreements**

A. The commission may enter into cooperative and reciprocal agreements with the regulatory authorities of the federal government or any state for the periodic examination of persons engaged in the business regulated by this Chapter and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The commission may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out its responsibilities under this Chapter and assure compliance with the laws of this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:969.40(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 31:927 (April 2005).

Lessie A. House  
Executive Director

0504#078

### **RULE**

#### **Department of Health and Hospitals Board of Dentistry**

Dentists, Dental Assistants/Hygienists, and  
Anesthesia/Analgesia Administration  
(LAC 46:XXXIII.304, 306, 507, 703, and 1515)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XXXIII. Dental Health Profession**

#### **Chapter 3. Dentists**

#### **§304. Address of Dental Practice and Mailing Address**

A. Each dentist shall inform the Louisiana State Board of Dentistry of his official mailing address and all office addresses at which the dentist practices dentistry within 30 days of changing his official mailing address or commencing practice at each location.

B. Failure of a dentist to notify the board within 30 days of any change of official mailing address or office move or relocation will result in the imposition of any one or more of the penalties set forth in R.S. 37:780(B).

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 15:965 (November

1989), amended LR 18:739 (July 1992), LR 23:1525 (November 1997), LR 31:927 (April 2005).

#### **§306. Requirements of Applicants for Licensure by Credentials**

A. - A.2. ...

3. has been in active practice, while possessing a nonrestricted license in another state, by working full-time as a dentist at a minimum of 1,000 hours per year for the preceding five years before applying for licensure in Louisiana or full-time dental education as a teacher for a minimum of three years immediately prior to applying for licensure; or has completed a two-year general dentistry residency program or successfully completed a residency program in one of the board-recognized dental specialties as defined in §301; the applicant completing the residency program must apply for licensure within 180 days of graduation from said specialty program or fellowship or work full-time as a dentist for five years before licensure;

A.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 24:1114 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1612 (August 2000), repromulgated LR 27:1893 (November 2001), amended LR 28:1777 (August 2002), LR 31:927 (April 2005).

#### **Chapter 5. Dental Assistants**

#### **§507. High School Diploma Requirement**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1116 (June 1998), amended LR 30:2306 (October 2004), repealed LR 31:927 (April 2005).

#### **Chapter 7. Dental Hygienists**

#### **§703. Address of Employment and Mailing Address**

A. Each dental hygienist shall inform the Louisiana State Board of Dentistry of his or her official mailing address and all office addresses at which the dental hygienist is employed as a dental hygienist and the name of the employing dentist. Failure of a dental hygienist to notify the board within 30 days of a change in the mailing address or address of employment as a dental hygienist and the name of the new employing dentist will result in the imposition of any one or more of the penalties set forth in R.S. 37:780(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 15:966 (November 1989), amended LR 31:927 (April 2005).

#### **Chapter 15. Anesthesia/Analgesia Administration**

#### **§1515. Hospitals and Outpatient Surgical Centers; Exemption**

A. Office permits for the administration of anesthesia are not required when the procedure is being performed in a hospital or outpatient surgical center approved by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 31:927 (April 2005).

C. Barry Ogden  
Executive Director

0504#015

## RULE

### Department of Health and Hospitals Board of Veterinary Medicine

Professional Conduct; Partnerships, Corporations, and  
Limited Liability Companies  
(LAC 46:LXXXV.1015)

The Louisiana Board of Veterinary Medicine amends and adopts LAC 46:LXXXV.1015 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1511 et seq. This text is being amended to clarify the legal guidelines and specifics for management services arrangements for veterinary practices. The amendment to the Rules is set forth below.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 10. Professional Conduct

#### §1015. Partnerships, Corporations, and Limited Liability Companies

A. ...

B. For a management services arrangement to be legally permissible, it cannot provide control, whether directly or indirectly, to the management services organization of the veterinary medical practice of a veterinarian licensed by the board as further specified herein.

1. The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

a. *Control* or *Controlling*—The final decision making authority regarding the delivery or the manner of delivery of any services, products or procedures involving, whether directly or indirectly, the practice of veterinary medicine.

b. *Intervene*—Directly or indirectly controlling the practice of veterinary medicine. Recommending or providing a management service under this rule does not constitute intervention as long as the veterinarian licensed by the board maintains control of the practice of veterinary medicine.

c. *Management Services*—Those services relating to the business operations of a veterinary practice which do not intervene in the practice of veterinary medicine. Business operations may include services related to marketing, advertising, computer software/hardware technology, etc., for systems support.

d. *Management Services Organization*—A person or entity that provides management services to a veterinarian licensed by the board.

e. *Veterinary Medical Personnel*—Persons under the supervision of the veterinarian, including but not limited to other veterinarians licensed or permitted by the board, veterinary technicians registered by the board, animal

ethanasia technicians certified by the board, equine dentists registered by the board, preceptees participating in an approved preceptorship program, student externs, and lay people, who perform duties involved in the practice of veterinary medicine.

2. A veterinarian licensed by the board may contract with a management services organization to provide management services; however, such relationship must be in compliance with the criteria set forth herein, as well as in compliance with the Louisiana Veterinary Practice Act, the board's rules, and other applicable laws.

3. A veterinarian licensed by the board, who contracts with a management services organization to provide management services, shall:

a. have final decision-making authority regarding the purchase of inventory, supplies, products, drugs, and medications from suppliers and manufacturers of his own choosing in good faith and at arms length;

b. be responsible for compliance with all standards and requirements set forth in the Louisiana Veterinary Practice Act, the board's rules, and other applicable laws;

c. make all decisions which involve, whether directly or indirectly, the practice of veterinary medicine and will be held accountable for such decisions in accordance with the Louisiana Veterinary Practice Act, the board's rules, and other applicable laws;

d. maintain the professional relationship with his client and patient which shall be personal and direct;

e. specifically comply with all requirements of the Louisiana Veterinary Practice Act, the board's rules, and other applicable laws regarding the use of business names, marketing and advertising.

4. Prohibited Practices. A management services organization shall not control or intervene in veterinary medical practice of a veterinarian licensed by the board. Prohibited practices by a management services organization, whether or not authorized by contract, are listed as follows:

a. employing a veterinarian to practice veterinary medicine;

b. determining compensation of a veterinarian for the practice of veterinary medicine;

c. controlling or intervening in the practice of veterinary medicine as defined in the Louisiana Veterinary Practice Act, the board's rules or other applicable legal authority;

d. controlling or intervening in a veterinarian's selection or use of type or quality of medical equipment, instruments, goods, supplies and pharmaceuticals to be used in the practice of veterinary medicine;

e. controlling or intervening in a veterinarian's diagnostic and/or treatment decisions or regimen used in the practice of veterinary medicine;

f. determining the amount of time a veterinarian may spend with a patient or client;

g. owning pharmaceuticals, unless the pharmaceuticals are owned in compliance with applicable Louisiana or federal law;

h. establishing the price to be charged to the veterinary client for the goods, supplies and pharmaceuticals used in the practice of veterinary medicine;

i. owning and controlling the records of patients of the veterinarian;

j. mandating compliance with specific professional standards, protocols or practice guidelines relating to the practice of veterinary medicine;

k. placing limitations or conditions upon the communications between a veterinarian and client, as well as between a veterinarian and the board;

l. encouraging or requiring a veterinarian to make referrals of patients in violation of the Louisiana Veterinary Practice Act, the board's rules or other applicable legal authority;

m. deterring, whether directly or indirectly, a veterinarian, his staff or employees, from reporting alleged violations of the Louisiana Veterinary Practice Act, the board's rules or other applicable legal authority regulating the practice of veterinary medicine and its components.

5. A veterinarian licensed by the board, who is practicing veterinary medicine, and business entities owned by and comprised entirely of veterinarians licensed by the board to practice veterinary medicine, are not prohibited from the activities set forth in Subparagraphs 4.a-j above.

6. Permitted Management Services. Permitted activities by a management services organization to a veterinarian licensed by the board, are listed as follows:

a. providing by lease, ownership or other arrangement:

i. the physical location or facility used by the veterinarian; and

ii. the business, office and similar non-medical equipment used by the veterinarian;

b. providing for the repair, maintenance, renovation, replacement, or otherwise of any facility or equipment used by the veterinarian in the practice of veterinary medicine;

c. providing accounting, financial, payroll, bookkeeping, budget, investment, tax compliance and similar financial services to the veterinarian;

d. providing information and information systems and services for the veterinarian so long as any patient records or logs required to be kept by law in these systems are clearly owned and freely accessed by the veterinarian;

e. providing the services of billing and collection of the veterinarian's fees and charges;

f. arranging for the collection or sale of the veterinarian's accounts receivable;

g. providing consultant services regarding advertising, marketing and public relations in compliance with Louisiana Veterinary Practice Act, the board's rules and any other applicable legal authority;

h. providing contract negotiation, drafting and similar services for the veterinarian;

i. providing non-veterinary medical personnel for the physical location or facility for the purposes of reception, scheduling, messaging and similar coordination services for the veterinarian;

j. assisting in obtaining any business license and permit necessary to operate a practice of veterinary medicine that may be required, including the veterinarian's license, and any annual renewal thereof, to practice veterinary medicine; however, the veterinarian shall ultimately be responsible for all licenses and permits required to operate

the practice of veterinary medicine, including the timely renewal of his license, as well as the required annual continuing education for renewal and payment of applicable fees;

k. assisting in recruiting, continuing education, training and legal and logistical per review services for the veterinarian;

l. providing insurance, purchasing and claims services for the veterinarian, and including the veterinarian and veterinary medical personnel on the same insurance policies and benefit plans as the management services organization as allowed by applicable law;

m. providing consulting, business and financial planning and business practices advice;

n. employing and controlling persons who:

i. perform management services; or

ii. are veterinarians employed by the management services organization to perform management services but not the practice of veterinary medicine; or

iii. perform management, administrative, clerical, receptionist, secretarial, bookkeeping, accounting, payroll, billing, collection, and janitorial services.

7. Disclosure of Management Services Contracts. A veterinarian licensed by the board that intends to contract, or has contracted, with a management services organization shall:

a. make available for inspection by the board at the board's office a copy of the proposed contract, and thereafter any amendment to or renewal of an existing contract, with a management services organization for the board to determine compliance with this rule prior to signing the contract, amendment or renewal. The board will make every effort in good faith to review the contract, or any amendment or renewal, within a reasonable time period;

b. make available for inspection by the board, upon written demand, at the board's office a copy of the contract, as amended or renewed, with the management services organization;

c. make available for inspection by the board, upon written demand, at the board's office a copy of any documents which implement or relate to the contract, as amended or renewed, with the management services organization;

d. make available to the board, upon written demand, at the board's office a copy of any contract, including amendments and renewals, with the management services organization as part of an investigation of a veterinarian or any veterinary medical personnel.

8. A management services arrangement created subsequent to the effective date of this rule shall be required to comply with the standards set forth in this rule. Any management services arrangement in existence on the effective date of this rule shall be required to comply with the standards set forth in this rule upon renewal, exercise of option, extension, or amendment of the term of the existing management services arrangement or agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:229 (March

Wendy D. Parrish  
Administrative Director

0504#035

**RULE**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

Registered Equine Dentists  
(LAC 46:LXXXV.1515)

The Louisiana Board of Veterinary Medicine amends and adopts LAC 46:LXXXV.1515 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1569. This text is being amended to clarify and implement the regulatory requirements of a registered veterinary technician and/or layperson employed by a veterinarian, with the proper training and under the appropriate supervision, to perform limited equine dentistry procedures. The amendment to the Rules is set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 15. Registered Equine Dentists  
§1515. Practice and Duties**

A. No person shall practice equine dentistry in Louisiana unless issued a certificate of approval by the board or the person qualifies for limited exception to certification as set forth in Subsection F below.

B. - E.2.e. ...

F. With proper training and under the direct supervision of a licensed veterinarian, a layperson or registered veterinary technician employed by a licensed veterinarian may perform the rasping (floating) of molar, premolar, and canine teeth and the removal of deciduous incisor and premolar teeth (caps) of a horse. However, a layperson or registered veterinary technician shall not extract teeth, amputate large molar, incisor, or canine teeth, extract first premolar (wolf teeth), or repair the damaged or diseased teeth of a horse.

1. The following words and terms, when used in this rule and §710.D, shall have the following meanings.

a. *Proper Training* Prior to providing the procedures stated in Subsection F above, a layperson or registered veterinary technician shall have successfully completed a training program approved by the board which shall consist of classroom instruction and practical courses appropriate to the rasping (floating) of molar, premolar, and canine teeth and removal of deciduous incisor and premolar teeth (caps) of a horse.

b. *Direct Supervision* The supervising licensed veterinarian shall be readily accessible by beeper or cell phone, as well as physically present within a 30 mile radius of and 30 minutes or less travel time from the premises

where the procedure is to be rendered by the layperson or registered veterinary technician.

c. *Employed by the Licensed Veterinarian* The layperson or registered veterinary technician shall be employed by a licensed veterinarian which shall be demonstrated by the issuance of a W-2 tax statement or other appropriate document evidencing the employment relationship as approved by the board. A layperson or registered veterinary technician working as an independent contractor, partner or any other business arrangement with a licensed veterinarian, shall not be considered employed by the licensed veterinarian for purposes of the limited exception.

d. *Licensed Veterinarian* A veterinarian licensed by the board.

2. The supervising veterinarian shall establish the veterinarian-client-patient relationship as defined in §700 prior to the rendering of a procedure by the layperson or registered veterinary technician which shall be documented as part of the veterinarian's medical records regarding the horse. The permissible procedures delegated to a layperson or registered veterinary technician is at the discretion of the supervising licensed veterinarian who is ultimately responsible for the acts or omissions of these persons.

3.a. A legible record shall also be maintained on each horse which shall include the owner's name, address and telephone number, and identifying information on the horse, which shall include:

- i. the name, permanent identification marks, age, sex, and color;
  - ii. the layperson or registered veterinary technician's name, address and telephone number who provided the procedure;
  - iii. nature of dental complaint;
  - iv. method of restrain used during the procedure;
  - v. type of dental procedure and date performed;
  - vi. description of the outcome of the procedure;
- and
- vii. recommendations, if any, to the owner following the procedure.

b. The supervising veterinarian shall ultimately be responsible to maintain the record set forth herein as part of the medical records of the horse.

4. The layperson or registered veterinary technician shall not prescribe, recommend, or administer any legend drug or controlled substance.

5. The layperson or registered veterinary technician shall not be identified or referred to as a registered equine dentist, and shall not bill, directly or indirectly, the client or owner of the horse for services rendered. The employing veterinarian shall bill the client or owner of the horse for the services rendered by the layperson or registered veterinary technician.

6. A supervising licensed veterinarian who violates, or otherwise fails to comply with this rule, or any part thereof, including any applicable state and federal laws and/or regulations, shall be guilty of unprofessional conduct within the meaning of R.S. 37:1526(14).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1568.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 26:492 (March 2000), LR 31:930 (April 2005).

Wendy D. Parrish  
Administrative Director

0504#036

**RULE**

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

Pharmacy Benefits Management Program  
Narcotics and Controlled Substances

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

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the September 20, 1992 Rule concerning narcotics and controlled substances to be consistent with the Louisiana Board of Pharmacy's regulations governing the timeframes for filling prescriptions.

Schedule II narcotic analgesic prescriptions covered under the Louisiana Medicaid Program shall be filled within six months of the date prescribed by a physician or other prescribing practitioner. Also, in accordance with guidance from the Drug Enforcement Agency, the prescriber has the ability to issue multiple prescriptions for the same Schedule II medication to the same patient on the same day. All prescriptions must be dated and signed on the date issued. The prescriber may issue dispensing instruction, e.g., "do not dispense until a specified date."

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

0504#067

**RULE**

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

Professional Services Program  
Circumcisions Termination of Reimbursement

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

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing terminates reimbursement for the performance of routine circumcisions

of newborn infants and other circumcisions for which medical necessity is not documented.

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

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

0504#073

**RULE**

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

Professional Services Program  
Physician Services Reimbursement Increase

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

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement paid to physicians for selected surgical and medical services provided to designated Medicaid recipients.

**Pediatric Surgery Services**

A. Services include selected surgery services provided by the primary servicing physician to Medicaid recipients from 11 through 15 years of age. Physicians' Current Procedural Terminology (CPT) surgical procedure codes (10021-69990) shall be reimbursed at 100 percent of the Medicare Region 99 allowable for 2002, except for procedure codes on file that are in non-pay status, procedure codes for deliveries (59410) and (59415) or those payable with a fee greater than 100 percent of the Medicare Region 99 allowable for 2002.

B. Surgical services modified with modifier 63 (procedure performed on infants less than 4 kg) shall be reimbursed at 125 percent of the fee on file.

**Pediatric Medical Services**

A. Services include selected medical services provided by the primary servicing physician to Medicaid recipients from birth through 15 years of age. Physicians' Current Procedural Terminology (CPT) medical procedure codes (90918-99199) shall be reimbursed at 100 percent of the Medicare Region 99 allowable for 2002, except for procedure codes on file that are in non-pay status, procedure codes for conscious sedation (99141) and (99142) or those payable with a fee greater than 100 percent of the Medicare Region 99 allowable for 2002.

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

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

0504#074

## RULE

### Department of Insurance Office of the Commissioner

#### Regulation 79 Limited Licensing for Motor Vehicle Rental Companies (LAC 37:XIII.Chapter 103)

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 Department of Insurance hereby adopts Regulation 79 relating to the guidelines for the limited license to be issued to Motor Vehicle Rental Companies. This regulation will become effective upon publication in the April 2005 *Louisiana Register*. This action complies with the statutory law administered by the Department of Insurance.

#### Title 37

#### INSURANCE

#### Part XIII. Regulations

#### Chapter 103. Regulation 79 Limited Licensing for Motor Vehicle Rental Companies

##### §10301. Purpose

A. The purpose of this regulation is:

1. to implement the qualifications and procedures for licensing motor vehicle rental or leasing companies to sell or offer insurance in conjunction with the rental of a vehicle;
2. to govern the transactions of selling travel or automobile related products or coverage in conjunction with and incidental to the rental of vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:932 (April 2005).

##### §10303. Definitions

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein, unless the context clearly indicates otherwise.

*Commissioner* The Commissioner of Insurance.

*Department* The Department of Insurance.

*Detailed Plan of Operation or Plan* A comprehensive overview of the licensee's rental business pursuant in so far as it is regulated by the Department of Insurance. This information will supplement the restricted license application and will be on forms provided by the department.

*Limited Licensee* A person or entity authorized to sell certain coverage relating to the rental of vehicles pursuant to the provisions of Part XVII of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950.

*Part* Part XVII of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:2101 through 2112.

*Rental Agreement* Any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental company for rental or lease.

*Rental Company* Any person or entity in the business of providing primarily private passenger vehicles to the public under a rental agreement for a period not to exceed 90 days.

*Rental Period* The term of the rental agreement.

*Renter* Any person or entity obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed 90 days.

*Vehicle or Rental Vehicle* A motor vehicle of the private passenger type including passenger vans, minivans and sport utility vehicles, and of the cargo type including but not limited to cargo vans, pickup trucks and trucks with a gross vehicle weight of less than 26,000 pounds and which do not require the operator to possess a commercial driver's license.

a. Pursuant to R.S. 32:408B, Classes of licenses, this provision includes as a "vehicle" or "rental vehicle" those motor vehicles which require the operator to possess a Class "D" Chauffeur's License.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:932 (April 2005).

##### §10305. Issuance of Limited License - in General

A. Prior to approval, an applicant for a limited license issued to a motor vehicle rental company or franchisee of a motor rental company shall at a minimum:

1. submit an application on forms prescribed by the commissioner;
2. pay the applicable fee required by this Part;
3. provide a detailed plan of operation pursuant to §10307.B of this regulation;
4. provide an insurance sales material disclosure pursuant to §10307.C of this regulation;
5. provide a training program or syllabus and train all employees pursuant to §10307.D of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:932 (April 2005).

##### §10307. Limited Licensing; Application, Supplements, Requirements

A. Applicants for a rental company limited license shall apply to the Commissioner of Insurance on forms established by the commissioner. The application may request any information deemed necessary by the commissioner, including but not limited to the following:

1. the applicant's corporate, firm, or other business entity name, the business address and telephone number of the principal place of business and the business address and telephone number of each additional location at which the applicant will transact business under the license;
2. all assumed business names and other names under which the applicant will engage in business under the license;
3. the names of the employees, its agents, members, partners, officers, directors and stockholders of the applicant personally engaged in this state in soliciting or negotiating insurance in conjunction with the rental of a vehicle;
4. a declaration by the applicant that the applicant:
  - a. is competent and trustworthy;
  - b. intends to act in good faith;
  - c. has a good business reputation;
  - d. has the appropriate experience, training or education that qualifies the applicant for the license applied for;



e. has or will train all employees to be involved in the sale, offering, or negotiation of coverage prior to their conducting such activities with members of the public;

5. the application shall be signed by an officer of the applicant.

B. The application for this limited license shall be supplemented by a detailed plan of operation to be submitted on forms prescribed by the commissioner, which shall request information deemed necessary, including but not limited to:

1. name of any appointing insurer(s), if applicable;
2. the lines of business the applicant intends to write; including:
  - a. personal accident insurance;
  - b. liability;
  - c. personal effects;
  - d. roadside assistance;
  - e. emergency sickness; or
  - f. any other travel or auto related coverage in connection with or incidental to rental transaction;
3. a list of all business locations within Louisiana from which business will be conducted under the license.

C. The application for this limited license shall be supplemented with a copy of the licensee's proposed Insurance Sales Material Disclosure as required by the Louisiana Insurance Code, which at a minimum shall:

1. be received by the department prior to its use and be subject to approval by the department;
2. summarize clearly and correctly, the material terms of coverage offered to renters, including the identity of insurer(s), if applicable;
3. disclose that policies offered by the rental company may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowner's insurance policy, personal liability insurance policy, or other source of coverage;
4. state that purchasing the kinds of coverage specified in this Part is not required when renting a vehicle;
5. describe the claims filing process.

D. The application for this limited license shall be supplemented with a copy of the licensee's proposed training program or syllabus as required by the Louisiana Insurance Code. The training program required by this Part shall:

1. be received by the department prior to its use and be subject to approval by the department;
2. include basic instruction about the kinds of coverage offered under the license;
3. include the following items:
  - a. renters of vehicles are not required to purchase the coverage offered through the licensee as a condition of renting a vehicle;
  - b. renters must be informed that coverage offered by the licensee may duplicate existing coverage of the renter and that the renter should consult with his or her insurance producer if the renter has any questions about existing coverage;
  - c. the rental period of the rental agreement can not exceed 90 consecutive days;
  - d. claims procedures;
  - e. the identity of any insurance company providing coverage offered by the licensee;

f. evidence of coverage in the rental agreement must be disclosed to every renter who elects to purchase such coverage;

g. employees of the licensee are not authorized to evaluate a renter's existing coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:932 (April 2005).

#### **§10309. Renewals**

A. A limited license expires on the last day of the month in which the second anniversary of the initial issuance occurs. Thereafter, the limited license shall expire on the second anniversary following each renewal.

B. Prior to expiration, the licensee shall notify the commissioner of its intention to continue the license on forms provided by the commissioner and shall submit the applicable renewal fee as set forth in this Part. Late filings will be assessed a late fee as authorized by R.S. 22:1078.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:933 (April 2005).

#### **§10311. Limitations of License**

A. The rental company licensed pursuant to this Part may offer or sell insurance only in connection with and incidental to the rental of vehicles, whether at the rental office or by pre-selection of coverage in a master, corporate, individual, or group rental agreement, in any of the following general categories:

1. personal accident insurance covering the risks of travel including but not limited to accident and health insurance that provides coverage, as applicable, to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period;
2. liability insurance that provides coverage, as applicable, to renters and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle;
3. personal effects insurance that provides coverage, as applicable, to renters and other vehicle occupants for the loss of or damage to personal effects that occurs during the rental period;
4. roadside assistance and emergency sickness protection programs;
5. any other travel or automobile-related coverage that a rental company offers in connection with and incidental to the rental of vehicles.

B. A limited license issued under this Part shall also authorize any employee of the limited licensee to act individually on behalf, and under the supervision of, the limited licensee with respect to the kinds of coverage specified in this Part.

1. The limited licensee shall keep a list of all persons who are authorized or who are selling insurance as provided herein. The list shall be produced to the commissioner within two weeks of written demand from the commissioner.

C. No limited licensee under this Part shall advertise, represent, or otherwise hold itself or any of its employees or agents out as licensed insurers or insurance producers.

1. The sale of insurance not in conjunction with a rental transaction is prohibited by the provisions of Part XVII of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, §2101 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:933 (April 2005).

### **§10313. Insurance Charges**

A. Notwithstanding any other provision of this Part or any rule adopted by the Commissioner, a limited licensee pursuant to Part XVII of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, §2101 et seq., shall not be required to treat monies collected from renters purchasing such insurance when renting vehicles as funds received in a fiduciary capacity, provided that the charges for coverage shall be itemized and be ancillary to a rental transaction. The sale of insurance not in conjunction with a rental transaction is prohibited by the provisions of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:934 (April 2005).

### **§10315. Penalties for Violations**

A. In the event that any provision of Part XVII of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, §2101 et seq., or other applicable provision of this Title is violated by a limited licensee, the commissioner may revoke, suspend, refuse to renew, or levy a fine not to exceed one thousand dollars for each violation, up to one hundred thousand dollars in the aggregate for all violations in a calendar year per limited licensee, or impose such other penalty as the commissioner may deem necessary or convenient to carry out the purpose of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:934 (April 2005).

### **§10317. Applicability**

A. All limited licensees under Part XVII of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, §2101 et seq shall be subject to all other applicable provisions of this Title unless specifically exempted by Part XVII of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, §2101 et. seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 31:934 (April 2005).

### **§10319. 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, 22:2112, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 31:934 (April 2005).

J. Robert Wooley  
Commissioner

0504#041

## **RULE**

### **Department of Natural Resources Office of the Secretary**

#### **Louisiana Home Energy Rater Training and Certification (LAC 43:I.1921 and 1923)**

In accordance with R.S. 49:950 et seq. and under the authority of R.S. 36:354(E)(2), the Technology Assessment Division of the Louisiana Department Energy Raters may become certified to complete home energy ratings for existing and new residences. The department also wishes to promulgate Rules whereby Louisiana Home Energy Raters may receive additional certification from the department to review and rate existing small commercial buildings up to and including 7000 square feet.

#### **Title 43**

#### **NATURAL RESOURCES**

#### **Part I. Office of the Secretary**

#### **Subpart 1. General**

#### **Chapter 19. Louisiana Home Energy Rating**

#### **Subchapter B. Energy Rater Training and Certification**

#### **§1921. Certification of Home Energy Raters**

A. Definitions. For the purpose of this Section, the following words, unless the context does not permit such meaning, shall have the meanings indicated.

*Department* The Louisiana Department of Natural Resources.

*Energy Rating* A site inventory and descriptive record of features impacting the energy use of the building. This includes, but is not limited to: all building component descriptions (locations, areas, orientations, construction attributes and energy transfer characteristics); all energy using equipment and appliance descriptions (use, make, model, capacity, efficiency and fuel type), all energy features and results of tests and computations

*Existing Residential Building* A completed residential occupancy building, including residential occupancy dwellings in mixed occupancy buildings for which a certificate of occupancy, or equivalent approval for occupancy, has been issued.

*New Residential Building* Newly constructed residential occupancy buildings, including new residential occupancy dwellings of single or multifamily occupancy, permitted for construction after the effective date of this rule.

#### **B. General Provisions**

1. Rules provided herein shall apply to new and existing residential buildings including single-family and multifamily, site built residential buildings except those specifically exempted herein.

2. The energy rating for new and existing residential buildings shall be determined using only software approved by the Louisiana Department of Natural Resources for the southern climate. If a rating is performed on a proposed residential building, the rating shall be clearly labeled as a "rating based on plans".

3. Beginning with the implementation date of this rule, no person may provide a rating for residential buildings in Louisiana unless such a person has been certified as provided by this rule. To perform a rating for any residential building as required by this rule, the person performing the rating must be certified by the Louisiana Department of Natural Resources, or its designee.

4. Certification will be valid for one year following the date of issuance. No rating activity shall be conducted after the expiration of the term of certification. A duplicate certificate may be obtained by written request to the department.

5. An application for annual certification renewal shall be submitted on Form #ERHL-704, herein incorporated by reference, with a renewal fee of up to the maximum allowable by the state. In addition to the annual renewal fee, a certified home energy rater must, over a three-year period, have completed 12 credit hours of continuing education in courses accepted by the department for certification renewal. Acceptable courses shall, in general, be those dealing with energy use in buildings, building science, or building systems (including heating, ventilation and air conditioning), building design or construction, codes or plan review, financing or selling residential buildings, and courses on energy rating systems).

C. The following qualifications, at a minimum, are required for certification as a home energy rater.

1. The individual shall submit an application on the Louisiana Department of Natural Resources Form #ERHL-704, and pay the appropriate application fee of up to the maximum allowable by the state. The form is available by writing to the Louisiana Department of Natural Resources, 617 N. Third Street Baton Rouge, LA 70804 (the department).

2. Individuals applying for certification as home energy raters shall attend a training program provided by the department, or its designee and shall demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residences by passing department tests specific to residences rated for certification. At the department's discretion, individuals may also qualify for certification without attending the department's training program by providing a certificate of certification as a home energy rater from an accredited training provider approved by the department and passing the department's challenge tests. Individuals applying for certification as home energy raters in this manner must also demonstrate achievement of a level of knowledge and proficiency so as to successfully perform residential energy audits to rate new and existing residential buildings as part of their certification process by performing a minimum of seven home energy ratings, three of which must be performed under the supervision of the department or its designee.

3. No certification shall be approved unless the applicant demonstrates to the department that the following conditions are met.

a. The applicant has filed an accurate and complete application describing compliance with the relevant certification requirements along with the application fee.

b. The applicant is capable of performing the activities for which he/she is seeking certification

c. The applicant has not shown a lack of ability or intention to comply with this rule.

d. The applicant has conducted all energy rating and compliance related activities forthrightly and honestly.

4. Recertification is required at least every three years from the rater's last date of certification. For recertification, the applicant shall attend training on changes impacting the rating system provided by the department or its designee, and demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residential buildings by passing a department test applicable to the buildings being rated. The fee for recertification shall be the annual certification renewal fee. The home energy rater shall be required to satisfactorily perform and complete one home energy rating, accompanied and evaluated by another randomly chosen certified home energy rater, as a requirement for recertification and to comply with the department's guidelines requirement for periodic peer review and reevaluation of raters. Home energy raters shall also be required to serve as a peer evaluator at least once within three years before being recertified.

D. Reporting Requirements. Certified raters shall submit all ratings to the Louisiana Department of Natural Resources (the department) in electronic format, either via electronic mail (e-mail) or, at the department's discretion with prior written approval from the department, in some other electronic format.

E. The home energy rating report provided to the client shall include the following:

1. the certified rater's signature typed or printed name and rater certification number;
2. the date that the rating was completed; and
3. contact information for the home energy rater including address, and phone number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354(A)(3) and (E)(2).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 31:934 (April 2005).

### **§1923. Certification of Existing Small Commercial Buildings Energy Raters**

A. Definitions. For the purpose of this Section, the following words, unless the context does not permit such meaning, shall have the meanings indicated.

*Department* The Louisiana Department of Natural Resources.

*Energy Rating* A site inventory and descriptive record of features impacting the energy use of the building. This includes, but is not limited to: all building component descriptions (locations, areas, orientations, construction attributes and energy transfer characteristics); all energy using equipment and appliance descriptions (use, make, model, capacity, efficiency and fuel type); and all energy features, and computations.

*ESCB Energy Raters* This includes all energy raters qualified, trained, and certified by the department to conduct energy ratings on existing small commercial buildings-up to and including 7000 square feet.

*Existing Small Commercial Building (ESCB)* completed small commercial building, buildings for which a certificate of occupancy, or equivalent approval for occupancy, has been issued-up to and including 7,000 square feet.

#### B. General Provisions

1. Rules provided herein shall apply to site built existing small commercial buildings, except those specifically exempted herein.

2. The energy rating for existing small commercial buildings shall be determined using only software approved by the Louisiana Department of Natural Resources for the southern climate. If a rating is performed on a proposed building, the rating shall be clearly labeled as a "rating based on plans".

3. Beginning with the implementation date of this rule, no person may provide an energy rating for small commercial buildings in Louisiana unless such a person has been certified as provided by this rule. To perform an energy rating for any existing small commercial building as required by this rule, the person performing the energy rating must be certified by the Louisiana Department of Natural Resources, or its designee.

4. Certification will be valid for one year following the date of issuance. No energy rating activity shall be conducted after the expiration of the term of certification. A duplicate certificate may be obtained by written request to the department.

5. An application for annual certification renewal shall be submitted on Form #ERHL-704, herein incorporated by reference, with a renewal fee of the maximum amount allowable by the state. In addition to the annual renewal fee, a certified Existing Small Commercial Building (ESCB) energy rater must, over a three-year period, have completed 12 credit hours of continuing education in courses accepted by the department for certification renewal. Acceptable courses shall, in general, be those dealing with energy use in buildings, building science, or building systems (including heating, ventilation and air conditioning), building design or construction, codes or plan review, financing or selling small commercial buildings, and courses on energy rating systems.

C. The following qualifications, at a minimum, are required for certification as an ESCB energy rater.

1. The individual shall submit an application on the Louisiana Department of Natural Resources Form #ERHL-704 (ESCB) and pay the appropriate application fee of up to the maximum amount allowable by the state. The form is available by writing to the Louisiana Department of Natural Resources, 617 N. Third Street Baton Rouge, LA 70804.

2. Individuals applying for certification as an Existing Small Commercial Building Energy Rater shall attend a training program provided by the department, or its designee and shall demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residences, and small commercial building by passing department tests specific to the buildings rated for certification. At the department's discretion, an individual may also qualify for certification as ESCB energy rater without attending the department's training program by providing a certificate of certification as an ESCB energy rater from an accredited training provider approved by the department and passing the department's challenge tests. Individuals applying for

certification as ESCB energy raters in this manner must also demonstrate achievement of a level of knowledge and proficiency so as to successfully rate buildings by passing department tests specific to the type of building rated for certification. In addition, the rater candidate must complete seven ratings, four residential, and three small commercial while conducting three under the supervision of the department or its designee.

3. No certification shall be approved unless the applicant demonstrates to the department that the following conditions are met.

a. The applicant has filed an accurate and complete application describing compliance with the relevant certification requirements along with the application fee.

b. The applicant is capable of performing the activities for which he/she is seeking certification.

c. The applicant has not shown a lack of ability or intention to comply with this rule.

d. The applicant has conducted all energy rating and compliance related activities forthrightly and honestly.

4. Recertification is required at least every three years from the rater's last date of certification. For recertification, the applicant shall attend training on changes impacting the rating system provided by the department or its designee, and demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residential, and small commercial buildings by passing a departmental test applicable to the buildings being rated. The fee for recertification shall be the annual certification renewal fee. The ESCB energy rater shall be required to satisfactorily perform and complete one home, and one small commercial building energy rating, accompanied and evaluated by another randomly chosen certified home energy rater, as a requirement for recertification and to comply with the department's guidelines requirement for periodic peer review and reevaluation of raters. Home energy raters and ESCB energy raters shall also be required to serve as a peer evaluator at least once within three years before being recertified.

D. Reporting Requirements. Certified home energy raters, and ESCB energy raters shall submit all ratings to the Louisiana Department of Natural Resources in electronic format, either via electronic mail (e-mail) or, at the department's discretion with prior written approval from the department, in some other electronic format.

E. The home energy rating report (or ESCB Report) provided to the client shall include the following:

1. the certified rater's signature typed or printed name and rater certification number;

2. the date that the rating was completed; and

3. contact information for the home energy rater including address, and phone number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354(A) (3) and (E) (2).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 31:935 (April 2005).

Scott Angelle  
Secretary

0504#001

**RULE**

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

Nepotism; Student and Inmate Labor; Work Release;  
Classification and Reclassification Board  
(LAC 22:I.209, 301, 309, and 311)

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 repeals the entire contents of §209, Nepotism, §301, Use of Student and Inmate Labor Off Institutional Grounds, §309, Work Release: Selection of Inmates, and §311, Classification, Initial Classification and Reclassification Board.

Within the Louisiana Department of Public Safety and Corrections, the Office of Youth Development has been statutorily separated from the Office of Corrections Services. Therefore, Title 22 is being re-codified into two sections: adult offenders and juvenile offenders. The purpose of the rescission of the aforementioned regulations is to further this effort by eliminating all policies deemed to be internal management. Although the destination has changed, the internal policies will still be performed by the department.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 2. Personnel**

**§209. Nepotism**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1119.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 16:537 (June 1990), repealed LR 31:937 (April 2005).

**Chapter 3. Adult and Juvenile Services**

**Subchapter A. General**

**§301. Use of Student and Inmate Labor Off  
Institutional Grounds**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 15:832.

HISTORICAL NOTE: Adopted by Department of Public Safety and Corrections, Internal Affairs Section (April 1968), repealed LR 31:937 (April 2005).

**§309. Work Release: Selection of Inmates**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:711, R.S. 15:833, R.S. 15:893.1(B), and R.S. 15:1111.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 4:486 (December 1978), amended LR 17:203 (February 1991), repealed LR 31:937 (April 2005).

**§311. Classification, Initial Classification and  
Reclassification Board**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 8:274 (June 1982), repealed LR 31:937 (April 2005).

Richard L. Stalder  
Secretary

0504#034

**RULE**

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

Release, Placement and Transfer of Offenders; Medical  
Parole; Visitation; Contraband  
(LAC 22:I.306, 307, 310, 319, 327, and 331)

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 repeals the entire contents of §306: Release of Offenders to Sheriffs to Attend Funerals, §307: Placement and Transfer of Offenders: Selection Criteria, §310: Medical Parole, §319: Visitation: Religious Groups and Religious Lay Groups, §327: Introduction of Contraband at Adult and/or Juvenile Operational Units, and §331. Emergency Medical Treatment for Visitors.

Within the Louisiana Department of Public Safety and Corrections, the Office of Youth Development has been statutorily separated from the Office of Corrections Services. Therefore, Title 22 is being re-codified into two sections: adult offenders and juvenile offenders. The purpose of the rescission of the aforementioned regulations is to further this effort by eliminating all policies deemed to be internal management or any policy that has since been written into a different regulation. Although the destination has changed, the existing internal policies will still be performed by the department.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult and Juvenile Services**

**Subchapter A. General**

**§306. Release of Offenders to Sheriffs to Attend  
Funerals**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 16:693 (August 1990), repealed LR 31:937 (April 2005).

**§307. Placement and Transfer of Offenders: Selection  
Criteria**

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 16:693 (August 1990), repealed LR 31:937 (April 2005).

**§310. Medical Parole**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:754.20, as enacted by Act 563 of the 1990 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 17:605 (June 1991), amended LR 18:1265 (November 1992), repealed LR 31:938 (April 2005).

**§319. Visitation: Religious Groups and Religious Lay Groups**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Offices of Adult and Juvenile Services, LR 11:1094 (November 1985), repealed LR 31:938 (April 2005).

**§327. Introduction of Contraband at Adult and/or Juvenile Operational Units**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:110.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Offices of Adult and Juveniles Services, LR 11:1093 (November 1985), repealed LR 31:938 (April 2005).

**§331. Emergency Medical Treatment for Visitors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, Offices of Adult and Juvenile Services, LR 11:1093 (November 1985), repealed LR 31:938 (April 2005).

Richard L. Stalder  
Secretary

0504#033

**RULE**

**Department of Public Safety and Corrections  
Office of State Police**

**Ignition Interlock Devices (LAC 55:I.615)**

In accordance with the provisions of R.S. 15:306 et seq. and 32:378.2 et seq., relative to the authority of the Office of State Police to promulgate and enforce Rules, the Office of State Police amends the following Rule in order to clarify and redefine the monitoring requirements of ignition interlock devices.

**Title 55  
PUBLIC SAFETY  
Part I. State Police**

**Chapter 6. Ignition Interlock Devices**

**§615. Installation and Inspection**

A. Pursuant to the requirements of R.S. 32:378.2(H) and R.S. 15:306(C), all approved ignition interlock devices installed shall be monitored directly by trained technicians at least every 67 days, or at such other interval required by the court. The direct monitoring by trained technicians shall include on site physical inspection of the device, the vehicle,

and the wiring between the two to determine if there has been an attempted tampering and/or circumvention of the device. Any physical signs of tampering and/or circumvention shall be photographed and documented in writing by the manufacturer or his designated representative. Evidence of tampering/circumvention shall be reported by the manufacturer or his representative to the department and to the appropriate court within 48 hours of detection. All data downloaded from the device evidencing the driver's violation of state law, the department's regulations, or the appropriate court's orders shall be reported by the manufacturer to the appropriate court and to the department within 14 days of discovery.

B. Monitoring shall also include physical re-calibration of the device and downloading of all events contained in the device's memory. These events shall be printed in a summary fashion and maintained in the applicable probationary driver's file.

C. The manufacturer may allow the devices to lock out the probationary driver and may terminate monitoring in the event of the driver's failure to pay monitoring fees.

AUTHORITY NOTE: Promulgated in accordance with 57 FR, No. 67, 49 FR 48854, R.S. 15:306, R.S. 15:307.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 19:783 (June 1993), amended by the Department of Public Safety and Corrections, Office of State Police, LR 31:938 (April 2005).

Stephen Hymel  
Undersecretary

0504#057

**RULE**

**Department of Revenue  
Office of Alcohol and Tobacco Control**

**Responsible Vendor Program  
(LAC 55:VII.503-511)**

Under the authority of R.S. 26:933 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, has amended LAC 55:VII.501-509 and adopted LAC 55:VII.511 pertaining to the Responsible Vendor Program.

Act 881 of the 2003 Regular Session of the Louisiana Legislature amended R.S. 26:932-935 and 939, relative to the Responsible Vendor Program; to include the serving or selling of tobacco products in the Responsible Vendor Program. These proposed amendments and regulation implement the provisions of the Act by providing that the requirements of the Responsible Vendor Program apply to servers of alcoholic beverages and tobacco products.

The Responsible Vendor Program minimum course standards were moved from LAC 55:VII.509.F to Section 511 and provisions were added for a tobacco products course, which does not include alcoholic beverages, and minimum standards and certification for an abbreviated renewal course.

**Title 55  
PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control  
Subpart 1. Beer and Liquor**

**Chapter 5. Responsible Vendor Program**

**§503. Definitions**

A. For purposes of this Chapter, the following terms are defined.

\* \* \*

**Server.** Any employee of a vendor who is authorized to sell or serve beverage alcohol, tobacco, and tobacco products in the normal course of his or her employment or deals with customers who purchase or consume beverage alcohol, tobacco or tobacco products.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 26:931 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1949 (October 1998), amended LR 31:939 (April 2005).

**§505. Vendors**

A. Certification and Enrollment as a Responsible Vendor

1. - 3. ...

4. The vendor shall pay an annual fee of \$50 per licensed establishment holding a Class A-General, Class A-Restaurant, or Class B-Retail permit for the purpose of funding development and administration of the Responsible Vendor Program.

a. The fee shall be assessed on all new and renewal applications for retail permits to engage in the business of dealing in alcoholic beverages and/or tobacco and tobacco products.

A.4.b. - B.4. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 26:931 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1949 (October 1998), amended LR 31:939 (April 2005).

**§507. Servers**

A. ...

B. Server Permit

1. Server permits shall be valid for two years from the completion of an approved responsible vendor training course.

B.2. - C. ...

D. Permit Expiration, Renewal, and Lost Permits

1. Every server permit shall expire on the last day of the month, two years after the month that the server successfully completed the applicable responsible vendor server course.

2. To be eligible for renewal of a server permit, the server shall attend and successfully pass an approved abbreviated renewal responsible vendor course and examination given by an approved provider.

D.3. - F. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 26:931 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1950 (October 1998), amended LR 31:939 (April 2005).

**§509. Training: Providers and Trainers**

A. Trainer Certification. Approved providers shall only contract with trainers that have any combination of a minimum of two years of:

1. verified full-time employment in the fields of training, education, law, law enforcement, substance abuse rehabilitation, the hospitality, retail industry that involved the sale or service of alcohol or tobacco products; or

2. post-secondary education in the fields of training, education, law, law enforcement, substance abuse rehabilitation, the hospitality or retail industry that involved the sale or service of alcohol or tobacco products.

B. Provider Certification

1. A person or business entity that applies to become an approved provider for alcohol and tobacco server training shall submit the following to the program administrator:

1.a. - 2. ...

C. The alcohol and tobacco server permits issued by the program providers to students who successfully complete the server training programs shall be obtained from the Office of Alcohol and Tobacco Control.

D. - E.3. ...

F. Approved Provider Minimum Course Standards. To be certified to issue a server permit, the provider's course of instruction must include the subject areas specified in R.S. 26:933(C) in accordance with LAC 55:VII.511.

G. Approved Server Training Course Fees. Approved providers may charge fees for the cost of conducting the approved server training courses. The fees shall be approved by the program administrator and the commissioner and may not exceed \$25.

H. Sanctions against Approved Providers and Trainers. Any approved provider or trainer who violates any of the provisions of Title 26 of the Louisiana Revised Statutes or any of the requirements of Chapter 5 shall:

1. for a first offense receive a notice of intended suspension or revocation of the program administrator's certification or authorization, with 30 days allowed to correct any violations. If the violation is rectified no further action will be taken;

2. if the violation is not rectified or a second violation by the provider or their trainer occurs, the program administrator or their designee shall suspend approval and certification of the provider or trainer for a period not to exceed six months. Before the suspension will be lifted, the provider or trainer shall correct all violations;

3. the program administrator or their designee may increase sanctions based on successive violations within a two-year period. Numerous violations within a two-year period may indicate disregard for the law or failure to provide an acceptable responsible vendor server program so as to warrant cancellation of the certification of either the provider or their trainer.

I. Approved Provider Responsible for Acts of Trainers. The program administrator may hold a provider responsible for any act or omission of the provider's program, personnel, trainers, or representatives that violate any law or administrative rule pertaining to approved providers' privileges.

J. Prohibited Conduct. No approved provider or authorized trainer shall:

1. make any false or misleading statement to induce or prevent the program administrator's actions;

2. falsify, alter, or otherwise tamper with responsible vendor server permits or records;

3. permit a student to refer to any written material or have a discussion with another person during the exam unless the instructor authorizes the student to use an interpreter;

4. permit any student to drink alcoholic beverages or to be under the influence of intoxicants during the course presentation or examination, including breaks;

5. drink alcoholic beverages or be under the influence of intoxicants during the course presentation or examination, including breaks;

6. prohibit, interfere, or fail to assist the program administrator or their designee with scheduling or attendance of on-site observations.

#### K. Approved Provider and Trainer Advertising and Promotion Standards

1. Approved provider and trainer advertising related to the Responsible Vendor server training courses shall include:

a. the approved provider's or trainer's telephone number and cancellation policy;

b. the total amount of course time that includes instruction, examination and breaks;

c. a statement that students shall attend the entire course before taking the examination.

2. Advertising shall not suggest that the state of Louisiana, the program administrator, or any state agency endorses or recommends the approved provider's program to the exclusion of any other program.

3. Upon request, the approved provider or trainer shall give the program administrator copies of the program publications, brochures, pamphlets, scripts, etc. or any other representation of advertising materials related to the program.

4. An approved training provider or trainer must have records available to support all advertising claims or representations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1950 (October 1998), amended LR 31:939 (April 2005).

### **§511. Responsible Vendor Program Minimum Course Standards**

#### A. Classroom Instruction

1. Alcoholic Beverage and Tobacco Products Training must include at least two hours of classroom instruction, exclusive of breaks and examination time, presented in a continuous block of instruction. Classes shall be limited to no more than one 10-minute break per hour.

2. Tobacco Products must include at least one hour of classroom instruction, exclusive of breaks and examination time, presented in a continuous block of instruction.

B. The approved server training course shall be presented in its entirety to each student in a language approved by the program administrator.

C. Each server training course must include an examination approved by the program administrator, which is administered by the trainer immediately following the

course presentation. Students shall take the examination in writing, unless special circumstances require an oral examination. With the approval of the program administrator, the test may be offered in a language best understood by the student, or bilingual trainers may, in response to direct inquiries, clarify test questions using another language. Each student shall correctly answer at least 70 percent of the examination questions. Students who receive failing scores may be retested once at a time and place to be determined by the trainer. Otherwise, students must repeat the full course for an additional fee.

D. All training facilities shall meet the requirements of the Americans with Disabilities Act (ADA) and shall have adequate lighting, seating, easily accessible restrooms, and comfortable room temperature.

E. At the beginning of each server training course, the trainer shall give each student:

1. an enrollment agreement that clearly states the obligations of the trainer and student, refund policies, and procedures to terminate enrollment;

2. a notice that a student must complete the course in order to take the examination;

3. a server training workbook, approved by the program administrator, that is current, complete, and accurate. The workbook shall include an outline of the minimum course curriculum, table of contents, titles, subheadings, and page numbers. Physical specifications must meet the following minimum standards:

a. minimum dimensions of paper size must be 8 1/2 by 11 inches;

b. paper stock, excluding front and back cover, shall be white or near white, and of a quality and weight suitable for reproduction and note-taking with no ink bleed through;

c. type must be a minimum of 11-point in a type style commonly used for textbooks and periodicals;

d. binding must firmly hold the pages together in correct order and be sufficient for use during the course and as a reference;

e. professional printing and typesetting are not required, but reproductions must be clear, readable, and letter quality;

f. for ease of reading and adequate room for note-taking, white space must be a minimum of 30 percent per page with the print or copy to be no more than 70 percent of the page.

F. No server training class shall include more than 100 students and students that arrive more than 15 minutes after the class begins shall not be admitted.

G. The classroom presentation must be consistent with the approved program.

H. Discussions must be pertinent to responsible beverage alcohol or tobacco sales, service, and consumption.

I. The program administrator or their designee may attend any class to evaluate conformance with the program certified by the program administrator.

J. At least seven days in advance, the approved provider or their authorized trainers shall give written notice to the Office of Alcohol and Tobacco Control of the date, time, and location of all courses scheduled. The Office of Alcohol and Tobacco Control shall be notified by phone or fax of course cancellations prior to the course date except when cancellation cannot be anticipated, in which case notification



shall be within three business days of the scheduled course date.

K. Minimum Course Standards for Alcoholic Beverage and Tobacco Product Training. To be certified to issue a server permit, the provider's course of instruction shall include the subject areas specified in R.S. 26:933(C), as well as the following.

1. Introduction:

a. brief review of the law creating the Louisiana Responsible Vendor Program, which shall include when the program was enacted, who is required to participate and how, when it becomes mandatory, nature of permits issued to server, when server permits expire, obligation of server to attend a course every two years, and server renewal procedures;

b. objectives of the Responsible Vendor Program, which shall include education of vendors, servers, and their customers about responsible sales, service, and consumption of alcohol and tobacco; and prevention of the misuse, illegal use, and abuse of alcohol;

2. Alcoholic Beverage and Tobacco Products Course

a. classification of alcohol as a depressant and its effect on the human body, particularly on the ability to drive a motor vehicle:

i. alcohol is a depressant not a stimulant;

ii. how alcohol travels through the body, including how quickly it enters the bloodstream and reaches the brain;

iii. alcohol's effect on a person's ability to drive a motor vehicle, specifically reviewing alcohol's effect on a person's behavior, self-control, and judgment;

iv. outline of Louisiana's driving while intoxicated laws and penalties for violations;

b. effects of alcohol when taken with commonly used prescription and nonprescription drugs:

i. mixing alcohol with other drugs can produce dangerous side effects. It is especially dangerous to drive under the influence of alcohol and other drugs because of the increased impairment due to both;

ii. alcohol and other depressant drugs. Mixing alcohol with other depressants dangerously increases the depressant effect on the body;

iii. alcohol and stimulants. Stimulants do not cancel the intoxication and impairment due to alcohol;

iv. alone, many prescription and nonprescription drugs impair the ability to drive a motor vehicle;

v. the effects of commonly used prescription and nonprescription drugs;

vi. review of the effects of contemporary designer drugs such as GHB and Rohypnol;

c. absorption rate, as well as the rate at which the human body can dispose of alcohol and how food affects the absorption rate:

i. rate at which the human body absorbs alcohol;

ii. blood alcohol concentration (BAC) and how to estimate a person's BAC. Include drink equivalency guidelines;

iii. how the human body disposes of alcohol;

iv. the effect of food on the absorption rate;

v. time is the only real factor that reduces intoxication;

d. methods of identifying and dealing with underage and intoxicated persons, including strategies for delaying and denying sales and service to intoxicated and underage persons:

i. procedures and methods for detecting false identification;

ii. procedures and methods for denying service or entry to underage persons;

iii. procedures and methods for identifying intoxicated persons including behavioral warning signs and other signs of impairment;

iv. procedures and methods for preventing over intoxication;

v. procedures and methods for terminating service to intoxicated persons;

e. state laws and regulations regarding the sales and service of alcoholic beverages for consumption on or off premises:

i. legal forms of identification in Louisiana;

ii. legal age to purchase, possess, and consume alcohol and penalties for violation;

iii. legal age to enter licensed premises and penalties for violation;

iv. legal age to be employed by a vendor and penalties for violation;

v. acts prohibited on licensed premises and penalties for violation;

f. parish and municipal ordinances and regulations that affect the sale and service of alcoholic beverages for consumption on or off the licensed premises. These provisions will depend on the jurisdiction of the servers attending the class and may vary according to the parish and municipality:

i. legal hours of operation and Sunday sales;

ii. noise, litter, and zoning;

iii. leaving premises with alcohol;

iv. preemption of parish and municipal server training courses;

v. parish or municipal server licensing requirements;

vi. other relevant regulations;

g. state and federal laws and regulations related to the lawful age to purchase tobacco products and age verification requirements:

i. state and federal legal purchasing age;

ii. federal age verification requirements;

iii. state and federal laws and regulations related to vending machines;

iv. state laws related to sign posting requirements;

v. state laws related to minimum packaging requirements.

3. Tobacco Products Course

a. Outline and review of all relevant changes to local, state, and federal laws, rules and regulations affecting the retail operation of tobacco businesses. With regard to local laws, rules and regulations, each approved provider shall determine the changes for each jurisdiction in which it offers Tobacco courses and submit their local tobacco curriculum to the program administrator for approval;

b. state and federal laws and regulations related to the lawful age to purchase tobacco products and age verification requirements:

- i. state and federal legal purchasing age;
  - ii. federal age verification requirements;
  - iii. state and federal laws and regulations related to vending machines;
  - iv. state laws related to sign posting requirements;
  - v. state laws related to minimum packaging requirements.
- c. State laws and regulation regarding the sales and service of tobacco products:
- i. legal form of identification in Louisiana;
  - ii. procedures and methods for detecting false identification.
- d. Guidelines for prevention of tobacco use and addiction:
- i. health risks;
  - ii. addiction problems with adolescents;
  - iii. health effects of smoking among young people.
- e. What you should know about tobacco:
- i. tobacco and athletic performance;
  - ii. tobacco and personal appearance.
- f. State laws and regulations regarding the sales and service of the Louisiana Lottery Corporation Law:
- i. a review of the Louisiana Lottery corporation Law, which shall include when it was established;
  - ii. legal age to purchase a lottery ticket and penalties for violation;
  - iii. legal age to claim a lottery ticket;
  - iv. legal age to sell lottery ticket;
  - v. advertisement;
- g. parish and municipal ordinances and regulations that affect the sale and service of tobacco products. These provisions will depend on the jurisdiction of the servers attending the class and may vary according to the parish and municipality.

**L. Minimum Standards and Certification for an Abbreviated Renewal Course**

1. To be certified to conduct abbreviated renewal server training courses, the approved provider's course of instruction shall include the following.

a. An outline and review of all relevant changes to local, state, and federal laws, rules and regulations affecting the retail operation of alcohol beverage and or tobacco businesses. With regard to local laws, rules and regulations, each approved provider shall determine the changes for each jurisdiction in which it offers abbreviated renewal courses and submit their local renewal course curriculum to the program administrator for approval.

b. Statistics related to drunk driving arrests, accidents and fatalities in Louisiana. The approved provider shall incorporate the statistics into their abbreviated renewal course curriculum in the same form and content that it is provided by the program administrator and compiled from the most current annual report of the Louisiana Highway Safety Commission or National Highway Traffic Safety Administration.

c. Techniques to prevent persons suspected of being intoxicated from operating motor vehicles.

d. Any other information relevant to the prevention of drunk driving.

e. Information concerning societal and health concerns related to the use of tobacco products.

2. All abbreviated renewal course program content and method of presentation shall be approved by the Program Administrator prior to conducting any abbreviated renewal server training courses.

3. All abbreviated renewal server training courses shall include at least one hour of classroom instruction exclusive of breaks and examination time, and shall be presented in a continuous block of time.

4. Each abbreviated renewal server training course shall include an examination approved by the program administrator.

5. Prior to teaching an abbreviated renewal server training course, the trainer must receive proof of prior training from the server. This proof may consist of a server permit not having expired for longer than one year, or any other proof deemed valid by the discretion of the trainer.

6. Unless otherwise provided for in this Subsection, all other regulations applicable to regular server training courses shall apply to renewal server training courses.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 26:931 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 31:940 (April 2005).

Murphy J. Painter  
Commissioner

0504#052

**RULE**

**Department of Transportation and Development**

Compilation of Public Works  
(LAC 56:I and III)

The Rules pertaining to LAC 70:XIII and XV, Public Works, have been moved and compiled into LAC 56, Public Works. The table below shows the new placement for each Section.

**Title 56. Public Works  
[Compilation of LAC 70:XIII and XV]**

LAC 70:XIII, Public Works	LAC 56, Public Works
<b>Chapter 1. Water Wells</b>	<b>Part 1. Water Wells</b>
§101. Registering Water Wells and Holes	<b>Chapter 1. Registering Water Wells and Holes</b>
§101.A. Authorization	§101. Authorization
§101.B. Purpose	§103. Purpose
§101.C. Registration of Water Wells and Holes Completed on or after November 1, 1985	§105. Registration of Water Wells and Holes Completed on or after November 1, 1985
§101.D. Registration of Water Wells Completed Prior to November 1, 1985	§107. Registration of Water Wells Completed Prior to November 1, 1985
§101.E. Use of Information Obtained from Registration Forms	§109. Use of Information Obtained from Registration Forms
§101.F. Enforcement Actions	§111. Enforcement Actions
§111.A. Definitions	§113. Definitions
§111.B. References	§115. References
§113. Water Well Registration (Long Form)	§117. Water Well Registration (Long Form)
§115. Water Well Registration (Short Form)	§119. Water Well Registration (Short Form)
§103. Water Well Construction	<b>Chapter 3. Water Well Construction</b>

§103.A.	§301. Preamble
§103.B. Purpose	§303. Purpose
§103.C. Approval of Plans and Specifications for Public Water Supply Systems	§305. Approval of Plans and Specifications for Public Water Supply Systems
§103.D. Licensing Requirements	§307. Licensing Requirements
§103.E. Registration Requirements	§309. Registration Requirements
§103.F. Variance Requests	§311. Variance Requests
§103.G. Minimum Distance Requirements for Locating a Water Well	§313. Minimum Distance Requirements for Locating a Water Well
§103.H. Location in Relation to Possible Sources of Contamination	§315. Location in Relation to Possible Sources of Contamination
§103.I. Location in Relation to Levees	§317. Location in Relation to Levees
§103.J. Location in Relation to Flood Water	§319. Location in Relation to Flood Water
§103.K. Location in Relation to Buildings	§321. Location in Relation to Buildings
§103.L. Drilling and Construction	§323. Drilling and Construction
§103.M. Casing	§325. Casing
§103.N. Screen	§327. Screen
§103.O. Methods and Standards for Cementing the Annular Space	§329. Methods and Standards for Cementing the Annular Space
§103.P. Well Development and Disinfection	§331. Well Development and Disinfection
§103.Q. Standards for Miscellaneous Appurtenances	§333. Standards for Miscellaneous Appurtenances
§103.R. Enforcement Actions	§335. Enforcement Actions
§105. Plugging Abandoned Water Wells and Holes	<b>Chapter 5. Plugging Abandoned Water Wells and Holes</b>
§105.A. Organization	§501. Organization
§105.B. Purpose	§503. Purpose
§105.C. General Rules and Regulations	§505. General Rules and Regulations
§105.D. Abandoned Water Wells and Holes That Shall Be Plugged	§507. Abandoned Water Wells and Holes That Shall Be Plugged
§105.E. Exemptions	§509. Exemptions
§105.F. Licensing Requirements	§511. Licensing Requirements
§105.G. Variance Requests	§513. Variance Requests
§105.H. Submission of Water Well Plugging and Abandonment Forms (DOTD-GW-2)	§515. Submission of Water Well Plugging and Abandonment Forms (DOTD-GW-2)
Appendix IV--Instructions for Completing Water Well Plugging and Abandonment Forms (DOTD-GW-2) (Louisiana Register--October 1985)	§516. Instructions for Completing Water Well Plugging and Abandonment Forms (DOTD-GW-2)
§105.I. Responsibility of the Owner	§517. Responsibility of the Owner
§105.J. Failure of the Owner to Plug an Abandoned Water Well	§519. Failure of the Owner to Plug an Abandoned Water Well
§105.K. Responsibilities of the Contractor	§521. Responsibilities of the Contractor
§105.L. Site Inspection by the Department Representatives	§523. Site Inspection by the Department Representatives
§105.M. Availability of Water Well Data	§525. Availability of Water Well Data
§105.N. Regulations for Determining Status of Wells or Holes and for Determining Plugging Responsibility	§527. Regulations for Determining Status of Wells or Holes and for Determining Plugging Responsibility
§105.O. Plugging and Filler Materials	§529. Plugging and Filler Materials
§105.P. Methods and Standards for Plugging Abandoned Water Wells and Holes	§531. Methods and Standards for Plugging Abandoned Water Wells and Holes
§105.Q. Enforcement Actions	§533. Enforcement Actions
§107. Installing Control Devices on Free Flowing Water Wells	<b>Chapter 7. Installing Control Devices on Free Flowing Water Wells</b>
§107.A. Authorization	§701. Authorization
§107.B. Purpose	§703. Purpose
§107.C. General Rules and	§705. General Rules and

Regulations	Regulations
§107.D. Responsibility of the Owner	§707. Responsibility of the Owner
§107.E. Responsibility of the Department	§709. Responsibility of the Department
§107.F. Failure of Responsible Party to Install a Control Device	§711. Failure of Responsible Party to Install a Control Device
§107.G. Enforcement Actions	§713. Enforcement Actions
	<b>Part III. Flood Control and Water Management</b>
	<b>Subpart 1. Water Resources and Flood Control</b>
<b>Chapter 13. Funding of Water Resources</b>	<b>Chapter 1. Funding of Water Resources</b>
§1301. Priorities for Funding of Water Resources Projects	<b>Subchapter A. Priorities for Funding of Water Resources Projects</b>
§1301.A. Purpose of Rule	§101. Purpose of Rule
§1301.B. Definitions	§103. Definitions
§1301.C. Priority Policy	§105. Priority Policy
§1301.D. Eligible Sponsors of Projects	§107. Eligible Sponsors of Projects
§1301.E. Annual Report	§109. Annual Report
§1301.F. Regional Reports	§111. Regional Reports
§1301.G. Projects Eligible for Priority of Funding	§113. Projects Eligible for Priority of Funding
§1301.H. Projects Excluded from Priority of Funding	§115. Projects Excluded from Priority of Funding
§1301.I. Project Costs Eligible for Priority Funding	§117. Project Costs Eligible for Priority Funding
§1301.J. Project Costs Not Eligible for Priority Funding	§119. Project Costs Not Eligible for Priority Funding
§1301.K. Application for Priority of Funding	§121. Application for Priority of Funding
§1303. Project Priority Ranking System	<b>Subchapter B. Project Priority Ranking System</b>
§1303.A. General Overview	§123. General Overview
§1303.B. Base Priority Value	§125. Base Priority Value
§1303.C. Priority Value Points for Comparative Benefits	§127. Priority Value Points for Comparative Benefits
§1303.D. Priority Value Points to "Needing and Deserving" Projects	§129. Priority Value Points to "Needing and Deserving" Projects
§1303.E. Regional Priority Ranking	§131. Regional Priority Ranking
§1303.F. Ranking by Projects by the Office of Public Works	§133. Ranking by Projects by the Office of Public Works
§1303.G. Verification of Need	§135. Verification of Need
§1303.H. Conservation of Resources Required	§137. Conservation of Resources Required
§1303.I. Accurate Cost Estimates Required	§139. Accurate Cost Estimates Required
§1303.J. Regulatory Agency Approvals	§141. Regulatory Agency Approvals
<b>Chapter 15. Statewide Flood Control Program</b>	<b>Chapter 3. Statewide Flood Control Program</b>
§1501. Procedures for Implementing Statewide Flood Control Program	<b>Subchapter A. Procedures for Implementing Statewide Flood Control Program</b>
§1501.A.	§301. Sequence
§1503. Pre-Application	<b>Subchapter B. Pre-Application</b>
§1503.A. Instructions for Preparing Pre-Application	§303. Instructions for Preparing Pre-Application
§1501.B. Instructions for Preparing Attachments	§305. Instructions for Preparing Attachments
§1505. Application	<b>Subchapter C. Application</b>
§1505.A.	§307. Application
§1505.A.3. Format for Application	§309. Format for Application
§1505.A.4. General Instructions for Completing Application	§311. General Instructions for Completing Application
§1505.A.5. Pertinent Information for Completing Application	§313. Pertinent Information for Completing Application
§1507. Evaluation of Proposed Projects and Distribution of Funds	<b>Subchapter D. Evaluation of Proposed Projects and Distribution of Funds</b>

§1507.A. Project Evaluation Procedure	§315. Project Evaluation Procedure
§1507.B. Project Application Review and Public Hearings	§317. Project Application Review and Public Hearings
§1507.C. Distribution of Funds	§319. Distribution of Funds
§1507.D. Redistribution Procedure	§321. Redistribution Procedure
§1507.E. Legislative Process	§323. Legislative Process
§1507.F. Construction and Operations	§325. Construction and Operations
<b>Chapter 17. Funding Applications</b>	<b>Chapter 5. Funding Applications</b>
§1701. Guidelines and Procedures for Applications for State Funding Assistance	§501. Guidelines and Procedures for Applications for State Funding Assistance
<b>Chapter 21. Dam Safety Program</b>	<b>Chapter 7. Dam Safety Program</b>
§2101. Dam Safety	<b>Subchapter A. Dam Safety</b>
§2101.A. Introduction	§701. Introduction
§2101.B. Purpose	§703. Purpose
§2101.C. Glossary	§705. Glossary
§2101.D. Applicability	§707. Applicability
§2101.E. Permitting	§709. Permitting
§2101.F. Submittals	§711. Submittals
§2101.G. Design	§713. Design
§2101.H. Construction	§715. Construction
§2101.I. Maintenance and Operations	§717. Maintenance and Operations
§2101.J. Inspections	§719. Inspections
§2101.K. Enforcement	§721. Enforcement
§2101.L. Existing Structures	§723. Existing Structures
§2101.M. Emergency Preparedness Plan	§725. Emergency Preparedness Plan
§2101.N. References	§727. References
§2103. Figures and Forms	<b>Subchapter B. Figures and Forms</b>
§2103.A.	§729. Appendix 1, Structure--Approved Permit
	§731. Appendix 2, Structures--Chief Engineer Review
§2103.C. Procedural Sequence	§733. Appendix 3--Procedural Sequence
§2103.D. Pond Data Sheet	§735. Appendix 4--Pond Data Sheet
§2103.E. Notice of Application	§737. Appendix 5--Notice of Application
§2103.F. Minimum Required Submittals	§739. Appendix 6--Minimum Required Submittals
§2103.G. Letter of Intent	§741. Appendix 7--Letter of Intent
§2103.H. Letter of "Notice of Completion and As-Built Drawings"	§743. Appendix 8--Letter of "Notice of Completion and As-Built Drawings"
§2103.I. Letter of No Objection and Other Permits	§745. Appendix 9--Letter of No Objection and Other Permits
§2103.J. Minimum Hydrologic and Hydraulic Submittals to Establish Impact Classification and Inflow Design Flood (IDF)	§747. Appendix 10--Minimum Hydrologic and Hydraulic Submittals to Establish Impact Classification and Inflow Design Flood (IDF)
<b>LAC 70:XV, Flood Control and Water Management</b>	<b>LAC 56:III, Public Works--Flood Control and Water Management</b>
	<b>Subpart 2. Port Construction and Development Priority Program</b>
<b>Chapter 1. Louisiana Port Construction and Development Priority Program</b>	<b>Chapter 21. Louisiana Port Construction and Development Priority Program</b>
§101. Provisions of Act 452 of 1989 Regular Session	§2101. Provisions of Act 452 of 1989 Regular Session
§103. Definitions	§2103. Definitions
§105. Program Procedures	§2105. Program Procedures
§107. Program Requirements	§2107. Program Requirements
§109. Application	§2109. Application
§111. Evaluation	§2111. Evaluation
§113. Distribution of Funds	§2113. Distribution of Funds

<b>Chapter 2. Louisiana Port Construction and Development Priority Program Procedural Manual</b>	<b>Chapter 23. Louisiana Port Construction and Development Priority Program Procedural Manual</b>
§201. Port Construction and Development Priority Program	§2301. Port Construction and Development Priority Program
§203. Engineering, Advertising and Contracting Procedures	§2303. Engineering, Advertising and Contracting Procedures
§205. Reserved	§2305. Reserved
§207. Operation and Maintenance	§2307. Operation and Maintenance
§209. Sample Agreement with Sponsor Responsible for Engineering	§2309. Sample Agreement with Sponsor Responsible for Engineering

J. Michael Bridges, P.E.  
Undersecretary

0504#020

**RULE**

**Department of Transportation and Development  
Office of Highways/Engineering**

Control of Outdoor Advertising  
(LAC 70:III.Chapter 1)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development hereby amends Subchapter C of Chapter 1 of Part III of Title 70 entitled "Regulations for Control of Outdoor Advertising," in accordance with R.S. 48:461 et seq.

**Title 70**

**TRANSPORTATION**

**Part III. Outdoor Advertising**

**Chapter 1. Outdoor Advertising**

**Subchapter C. Regulations for Control of Outdoor Advertising**

**§127. Definitions**

\* \* \*

*Grandfathered Non-Conforming Sign* Can outdoor advertising sign in place at the time that a roadway became part of the National Highway System or Federal Aid Primary Highway System, subject to control of outdoor advertising rules, which could not obtain a permit due to regulations in effect at the time that the roadway became subject to outdoor advertising control.

\* \* \*

*Legal Non-Conforming Sign* Can outdoor advertising sign which when permitted by the department met all legal requirements, but does not meet current requirements of law.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 48:461 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, LR 2:187 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:872 (April 2002), LR 31:944 (April 2005).

**§135. Measurements for Spacing**

A. - C. ...

D. For continuous ramps which start at one entrance and end at the next exit, the allowable spacing shall be measured from the intersection of the edge of the mainline shoulder and the edge of the ramp shoulder; or in the case of bridges, the measurement would be taken where the mainline and the ramp bridge rails meet. This provision shall apply to §134.B.1 and 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 2:188 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:945 (April 2005).

**§136. Erection and Maintenance of Outdoor Advertising in Unzoned Commercial and Industrial Areas**

A. Definitions

\*\*\*

*Unzoned Commercial or Industrial Areas* Those areas which are not zoned by state or local law, regulation, ordinance and on which there are located one or more permanent structures within which a commercial or industrial business is actively conducted.

- a. Repealed.
- b. Repealed.

B. Qualifying Criteria

1. Primary Use Test

a. The business must be equipped with all customary utilities and must be open to the public regularly or be regularly used by employees of the business as their principal work stations.

b. The primary use or activity conducted in the area must be of a type customarily and generally required by local comprehensive zoning authorities in this state to be restricted as a primary use to areas which are zoned industrial or commercial.

c. The fact that an activity may be conducted for profit in the area is not determinative of whether or not an area is an *unzoned commercial or industrial area*. Activities incidental to the primary use of the area, such as a kennel or repair shop in a building or on property which is used primarily as a residence, do not constitute commercial or industrial activities for the purpose of determining the primary use of an *unzoned* area even though income is derived from the activity.

d. If, however, the activity is primary and local comprehensive zoning authorities in this state would customarily and generally require the use to be restricted to a commercial or industrial area, then the activity constitutes a commercial or industrial activity for purposes of determining the primary use of an area, even though the owner or occupant of the land may also live on the property.

2. Visibility and Measurement Test

a. The area along the highway extending outward 800 feet from and beyond the edge of such activity shall also be included in the defined area.

b. The purported commercial or industrial activity must be visible from the main-traveled way within the boundaries of that unzoned commercial or industrial area by a motorist of normal visual acuity traveling at a maximum posted speed limit on the main traveled way of the highway.

Visibility will be determined at the time of the field inspection by the department's authorized representative.

c. Each side of the highway will be considered separately. All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage, processing, or landscaped areas of the commercial or industrial activity and shall not be made from the property lines of the activities. The measurement shall be along or parallel to the edge of the pavement of the highway.

3. Structures and Grounds Requirements

a. - f. ...

g. Limits. Limits of business activity shall be in accordance with the definition of Unzoned commercial or industrial areas as stated in §136.B.2.a.

h. - i. ...

D. Non-Qualifying Activities

1. - 11. ...

12. Public park lands or playgrounds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 25:880 (May 1999), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:945 (April 2005).

**§139. Determination of On-Premise Exemptions**

A. - B. ...

C. Public Facility Sign Restrictions

1. Signs on the premises of a public facility, including but not limited to the following: schools, civic centers, coliseums, sports arenas, parks, governmental buildings and amusement parks, that do not generate rental income to the owner of the public facility may advertise:

a. the name of the facility, including sponsors of the public sign; and

b. principal or accessory products or services offered on the property and activities conducted on the property as permitted by 23 CFR 750, 709, including:

i. events being conducted in the facility or upon the premises, including the sponsor of the current event; and

ii. products or services sold at the facility and activities conducted on the property that produce significant income to the operation of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 2:189 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:945 (April 2005).

**§143. Procedure and Policy for Issuing Permits for Controlled Outdoor Advertising**

A. - L. ...

M. When a permitted outdoor advertising sign or device is knocked down or destroyed, or modified, the sign or device cannot be reinstalled or rebuilt without first obtaining a new outdoor advertising permit pursuant to the procedures established in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461, et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 2:191 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:945 (April 2005).

**§150. Removal of Unlawful Advertising**

A. If the owner of any sign erected in violation of this Part fails to comply with the provisions listed herein within 30 days of receipt of notice issued by the Louisiana Department of Transportation and Development, as provided in R.S. 48:461.7, that sign shall be removed by the department or its agent at the expense of the owner, except if said sign is within highway right-of-way, in which case the provisions of R.S. 48:347 shall apply.

B. Upon removal of the device by the department, the sign owner, landowner or other person responsible for erecting the sign shall pay the cost of removal to the department. The department shall store the sign for 30 days immediately following removal, during which time the sign may be claimed upon payment of the cost of removal and any costs associated with the removal and storage of the sign and collection of the cost of removal.

C. A sign which is not claimed within 30 days after removal shall be deemed the property of the department and may be disposed of by the department.

D. Any money received from the disposal of the device will be credited first to the cost of removal and storage of the device. Revenue in excess of such costs will be deposited by the secretary of the department in the state treasury.

E. If the revenue generated from disposal of the device does not meet or exceed the cost of removal and storage of the device, then the owner of the device, the landowner or other person responsible for erecting the device shall pay the remaining costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 20:796 (July 1994), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:946 (April 2005).

**§155. Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.2(A)(7) and R.S. 48:461.7.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 20:796 (July 1994), repealed by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:946 (April 2005).

J. Michael Bridges, P.E.  
Undersecretary

0504#058

**RULE**

**Department of Treasury  
Board of Trustees of the Louisiana  
State Employees' Retirement System**

**DROP Interest (LAC 58.I.2715)**

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended LAC 58.I.2715. This amendment sets out the manner of calculating interest paid on traditional DROP accounts and is needed to allow LASERS to timely pay interest on these accounts. This Rule complies with and is enabled by R.S. 11:515.

**Title 58**

**RETIREMENT**

**Part I. Louisiana State Employees' Retirement System**

**Chapter 27. DROP Program**

**Subchapter C. Withdrawal**

**§2715. Interest**

A. Interest shall not be credited to a participant's subaccount during the period of participation and shall be based on the balance of the account at the end of each month. All amounts which remain credited to the individual's subaccount after termination of participation in the plan, which is not transferred to a self-directed subaccount under R.S. 11:451.1, shall be credited with interest at the end of each plan year at a rate equal to the realized return on the system's portfolio for that plan year as certified by the system actuary in his actuarial report, less one-half of one percent.

B. Plan year shall mean calendar year. The actual posting of interest shall not be performed until the system actuary's report is approved by the Public Retirement Systems Actuarial Committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 31:946 (April 2005).

Robert L. Borden  
Executive Director

0504#044

**RULE**

**Department of Treasury  
Board of Trustees of the Louisiana  
State Employees' Retirement System**

**Trustee Candidate Nominating Petitions  
(LAC 58.I.303 and 503)**

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended LAC 58.I.303 and 503. These amendments are needed to protect the privacy of persons signing the nominating petitions of candidates seeking election to LASERS Board of Trustees. This Rule complies with and is enabled by R.S. 11:515.

**Title 58**

**RETIREMENT**

**Part I. Louisiana State Employees' Retirement System**

**Chapter 3. Election of Active Member Trustees**

**§303. Election Rules**

A. An active member candidate for a position on the Board of trustees must be an active member of the system with at least 10 years of credited service (excluding any military service credit) as of the second Tuesday in July, the date on which nominations close. The board of trustees shall accept the name and final four digits of the Social Security number of every candidate nominated by petition of 25 or more active members of the system and shall place the name of such candidates on the ballot, provided each such candidate meets the requirements for trustee. The petitioning members' signatures must be accompanied by the final four

digits of their Social Security numbers. The petition should contain all of the information which the candidate wishes to be included in the election brochure.

B. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996 (August 1997), LR 25:1278 (July 1999), LR 26:2633 (November 2000), LR 31:946 (April 2005).

#### **Chapter 5. Election of Retired Member Trustees**

##### **§503. Election Rules**

A. A candidate for a position of retired member trustee on the board of trustees must be a retired member of the system who has been on retired status (not including retired status under the Deferred Retirement Option Plan) by the date on which nominations close. The board of trustees shall accept the name and final four digits of the Social Security number of every candidate nominated by petition of 25 or more retired members of the system and shall place the name of such candidates on the ballot, provided each such candidate meets the requirements for trustee. The petitioning retired members' signatures must be accompanied by the final four digits of their Social Security numbers. All nominations for the board of trustees election must be in the office of the retirement system no later than the second Tuesday in July, close of business (4:30 p.m. Central Daylight Savings Time).

B. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:1278 (July 1999), LR 26:1490 (July 2000), LR 26:2633 (November 2000), LR 31:947 (April 2005).

Robert L. Borden  
Executive Director

0504#043

#### **RULE**

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

#### **Freshwater Shrimp Commercial Harvest (LAC 76:VII.102 and 701)**

The Wildlife and Fisheries Commission pursuant to the authority granted under R.S. 56:501 hereby adopts the following Rule providing for the harvest of any freshwater shrimp species in freshwater areas of the state, notwithstanding the provisions in R.S. 56:501, or any other law to the contrary, and repeals LAC 76:VII.701.D.10.Experimental Freshwater River Shrimp Permit.

### **Title 76**

### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 1. Freshwater Sports and Commercial Fishing**

##### **§102. Freshwater Shrimp, Commercial Harvest**

A. A properly licensed commercial fisherman may take any freshwater shrimp species in freshwater areas of the state, except in those freshwater areas of the state where commercial fishing is prohibited by law.

B. In addition to other legal methods of take as provided for in Title 56, any freshwater shrimp species may be taken with a *freshwater shrimp trap*.

C. A *freshwater shrimp trap* shall mean any device completely enclosed with an outside wire mesh not smaller than 1/4 inch, constructed with throats or flues not larger than 1 1/2 inches in diameter at their narrowest point, which is used for the sole purpose of taking freshwater shrimp in accordance with this Section. Other bait species may be taken when legally fishing a "freshwater shrimp trap." No game fish species can be taken while fishing a "freshwater shrimp trap" in accordance with this Section.

D. Violations. No person shall take or possess freshwater shrimp except as authorized by this Section. Any person found to be in violation of any provision of this Section shall be guilty of a class two violation and punished in accordance with the provisions applicable to R.S. 56:32.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:501.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 31:947 (April 2005).

#### **Chapter 7. Experimental Fisheries Program**

##### **§701. Permits**

A. - D.9. ...

##### **10. Experimental Freshwater Minnow Dip Net Permit**

a. May experimentally fish for bait fishes with a wire mesh dip net, 1/4 inch bar, no greater than 3 feet cylindrical open end net shaped in a cone, affixed to a handle that may be attached to a boat and is held by hand.

b. Only freshwater minnows may be taken; all threatened, endangered, specifically protected and game fish species (as defined in R.S. 56:327A) shall be immediately returned to waters from which they were caught.

c. Permittee may only possess minnows taken under this permit and legal freshwater commercial species.

d. The permittee shall have the permit in possession at all times when using permitted gear; permittee shall be on board permitted vessel when operating under conditions of permit.

e. The permitted gear must be properly licensed as a commercial dip net and may be fished in freshwater areas only.

f. Permittee may only possess the permitted gear and set lines while fishing under the permit.

g. Permittee may possess or fish no more than two dip nets as described in Subparagraph a above on board a vessel under this permit.

h. Permitted gear handle must be painted with international orange paint.

i. This permit may be canceled at any time if in the judgment of the secretary or his designee, the permit is being used for purposes other than that for which the permit was issued.

j. Violating any provisions or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in R.S. 56:32.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:571.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 12:119 (February 1986), LR 12:847 (December 1986), amended by the Department of Wildlife and Fisheries, Office of Fisheries, LR 15:1098 (December 1989), LR 28:1601 (July 2002), LR 29:49 (January 2003), Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 31:947 (April 2005).

Dwight Landreneau  
Secretary

0504#047

#### **RULE**

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

#### **Toledo Bend Reciprocal Agreement (LAC 76:VII.110)**

The Wildlife and Fisheries Commission hereby amends the Rule establishing bass regulations for Toledo Bend Reservoir.

### **Title 76**

### **WILDLIFE AND FISHERIES**

### **Part VII. Fish and Other Aquatic Life**

### **Chapter 1. Freshwater Sports and Commercial Fishing**

#### **§110. Toledo Bend Reservoir Reciprocal Agreement**

A. The recreational daily creel limit (daily take) for largemouth bass (*Micropterus salmoides*) and spotted bass (*Micropterus punctulatus*) is set at eight fish, in aggregate. The minimum total length limit for largemouth bass (*M. salmoides*) is 14 inches. There is no minimum length limit on spotted bass.

B. The daily creel limit for white bass (*Morone chrysops*) is 25 fish and there is no minimum total length limit.

C. There is no limit on the daily take of yellow bass (*Morone mississippiensis*).

D. No person shall possess any species of fish in excess of a one-day creel limit while on the water. No person shall at any time possess in excess of the daily creel limit of any species, except that a two day creel limit may be possessed on land, if the fish were caught on more than one day and no daily creel limits were exceeded. No person shall possess any filets of any fish species while on the water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25) (a), R.S. 56:325(C), R.S. 56:326.3, R.S. 56:673.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 14:548 (August 1988), amended LR 17:278 (March 1991), LR 17:1123 (November 1991), LR 19:790 (June 1993), LR 23:999 (August 1997), LR 31:948 (April 2005).

Dwight Landreneau  
Secretary

0504#048



# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Livestock Sanitary Board

Scrapie in Sheep and Goats  
(LAC 7:XXI.1105 and 1303)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et. seq., and R.S. 3:2093 and R.S. 3:2095, the Department of Agriculture and Forestry, Livestock Sanitary Board, proposes to adopt regulations regarding the identification of Scrapie in sheep and goats.

In order to be in compliance with federal regulations regarding the identification of Scrapie (spongiform encephalopathy) in sheep and goats the Louisiana Department of Agriculture and Forestry is adopting the following regulations requiring sheep and goats that have either tested positive for Scrapie, a transmissible disease found in sheep and goats, or are considered to have been exposed to the disease be identified. This identification will allow for the movement of sheep and goats to be traced so that further spread of the disease can be controlled or eliminated.

This Rule complies with and is enabled by R.S. 3:2093 and 3:2095.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XXI. Diseases of Animals

#### Chapter 11. Sheep

#### §1105. Identification of Sheep

A. All sheep changing ownership shall be individually identified by means of an official identification for Scrapie as defined in §101.

B. The following sheep shall be individually identified with Official Identification for Scrapie:

1. live Scrapie positive sheep;
2. suspect Scrapie positive sheep;
3. all sheep considered as high risk for developing Scrapie, as defined by USDA;
4. all sheep exposed to Scrapie.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093 and 2095.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:

#### Chapter 13. Goats

#### §1303. Identification of Goats

A. The following goats shall be individually identified by means of an Official Identification for Scrapie and defined in §101:

1. live Scrapie positive goats;
2. suspect Scrapie positive goats;
3. all goats considered as high risk for developing Scrapie, as defined by USDA;
4. all goats exposed to Scrapie.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093 and 2095.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:

#### Family Impact Statement

The proposed amendments to LAC 7:XXI.Chapters 11 and 13 regarding sheep and goats 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 Dr. Maxwell Lea through the close of business on May 25, 2005 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding this Rule is necessary.

Bob Odom  
Commissioner

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Scrapie in Sheep and Goats

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that there will be no implementation costs or savings to state or local governmental units. In order to be in compliance with federal regulations regarding the identification of Scrapie (spongiform encephalopathy) in sheep and goats, the Louisiana Department of Agriculture and Forestry is amending the following regulations requiring sheep and goats, that have either tested positive for Scrapie (a transmissible disease found in sheep and goats), or are considered to have been exposed to the disease, be identified. This identification will allow for the movement of sheep and goats to be traced so that further spread of the disease can be controlled or eliminated.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that there will be no effect on revenue collections for state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is estimated that there will be no costs and/or economic benefits to directly affected persons or non-governmental groups. There will be no extra costs or fees. The purpose of these rules is to provide for the identification of sheep and goats that have either tested positive for scrapie or are considered to have been exposed to the disease.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is estimated that there will be no effect on competition and employment.

Skip Rhorer Robert E. Hosse
Assistant Commissioner General Government Section Director
0504#030 Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746 Ancillary School Librarian Certification (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746 Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:I.903.A. This policy allows the issuance of an ancillary certificate to an individual who has a master's degree in library science from a regionally accredited college or university and a passing score on the PRAXIS exam 0310. At present, for an individual in Louisiana to serve in the position of school librarian, he/she must be certified as a classroom teacher. Individuals who are not certified teachers, yet have completed master's degree programs in library science, are not eligible for certification; to serve as school librarians, these individuals would need an ancillary certificate. Issuance of an ancillary certificate would allow an individual with a master's degree in library science to serve as a school librarian without having first completed an undergraduate degree in education. The proposed ancillary certificate would increase the number of certified librarians available to school districts and would align renewal of the Ancillary School Librarian certification with other certified personnel.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:2505 (December 2002), LR 29:117 (February 2003), LR 29:119 (February 2003), LR 29:121 (February 2003), LR 31:

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Ancillary School Librarian Valid for five years.

1. Eligibility Requirements

A. Hold a master's degree in library science from a regionally accredited institution; and

B. Earn a passing score on the PRAXIS Library Media Specialist examination (0310).

2. Renewal Guidelines Completion of 150 continuing learning units of district approved and verified professional development over the five-year time period during which the teacher holds the certificate. The Louisiana employing authority must request renewal of an Ancillary School Librarian Certificate.

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Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All family impact statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

- 1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., June 9, 2005, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Ancillary School Librarian Certification

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This policy allows the issuance of an Ancillary certificate to an individual who has a master's degree in library science from a regionally accredited college or university and a passing score on the PRAXIS exam Library Media Specialist (0310). The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

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)

The proposed ancillary certificate would increase the number of certified librarians available to school districts and would align renewal of the Ancillary School Librarian certification with other certified personnel.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0504#081

H. Gordon Monk
Acting Legislative Fiscal Officer
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 1196 Louisiana Food and Nutrition Programs,  
Policies of Operation  
(LAC 28:XLIX.335, 337, 343 and 737)

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

**Title 28**

**EDUCATION**

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

**Chapter 3. Financial Management and Accounting**  
**§335. Computing Average Meal Cost**

A. Each school system must use the average meal cost from the prior school year to establish meal charges for the current year of operation. If the school system sells extra food items, the cost and income generated from the extra sales must be taken into consideration when calculating the average cost of producing a breakfast and a lunch.

B. Computing Average Meal Cost for the Year

1. The following procedure is used to compute the average cost of lunch, breakfast and snacks:

- a. determine the total lunches served during the prior year;
- b. determine the total breakfasts served during the prior year and divide by two. Add this number to the total lunches served for the prior year;
- c. determine the total snacks served during the prior year and divide by five. Add this number to the total lunches and breakfast served for the prior year;
- d. if the school system sold extra food items, divide the extra sales income for the year by the meal equivalent factor (which is the average cost of the meal). (Refer to §339, Meal Equivalent Factor.);
- e. add the meal equivalents obtained in Subparagraph d to the number of lunches, breakfasts and snacks served in Subparagraph c. The sum of these numbers will be the number recognized as total meals served for the year;
- f. divide the total expenses (including the cost of purchased food and the value of commodities) for the prior school year by the total number of meals served in Subparagraph e to obtain the average lunch cost;

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2114 (December 2001), amended LR 29:2024 (October 2003), LR 31:

**§337. Establishing Meal/Snack Charges and Extra Sales Prices**

A. Meal and Snack Pricing Procedures

1. School systems shall use the following methods to calculate meal and snack charges.

- a. Student
  - i. Full-Price Student Meals

(a.) Different meal charges may be established for elementary and secondary grade levels and for variation meals. No student shall be requested to pay more than the actual cost of the lunch, breakfast, and/or snack, less the amount of reimbursement paid to the sponsor from federal funds.

- ii. Reduced Price Student Meals

(a.) The price charged for a reduced price lunch shall be less than the full price of the lunch and shall be \$0.40 or lower. The price charged for a reduced price breakfast shall be less than the full price of breakfast and shall be \$0.30 or lower.

(b.) The price of a reduced price meal may vary within the maximum limit of \$0.40, provided there is no discrimination in the establishment of the charge. For example, it is permissible for the charge in high schools to be higher than the charge in elementary schools.

- b. Student Snacks

- i. Full Price Student Snacks

(a.) A student not qualifying for the free rate shall pay the snack price established by the SFA. No student shall be requested to pay more than the actual cost of the snack, less the amount of reimbursement paid to the sponsor from federal funds.

- ii. Reduced Price Student Snacks

(a.) The amount charged for a reduced price snack shall be less than the full price of the snack and shall be \$0.15 or lower.

- c. - i.iv. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2114 (December 2001), amended LR 29:2024 (October 2003), LR 31:

**§343. Severe-Need Breakfast**

A. The USDA established severe-need funding for breakfast for schools serving a large percentage of needy students with the idea that the increased funding would permit the serving of more nutritious breakfasts. Severe-need funding is approved on a school-by-school basis. Within the SFA, some schools may be eligible to apply for severe-need funding and others may not.

B. SFAs may apply to receive severe-need funding for schools meeting the severe-need criteria.

C. The state agency shall pay the severe-need reimbursement rate throughout the school year to schools approved to participate.

- 1. Criteria for Application

a. Each school must meet the criteria provided below.

i. Forty percent or more of the lunches served to students during the second preceding year shall have been served free or at a reduced price.

ii. The school is participating in or desiring to initiate a breakfast program.

- 2. Application Form

a. Application for severe-need rates for schools already on the breakfast program, or for those schools now eligible for severe-need breakfast programs, must be made by completing the annual Schedule A Form. This form is submitted on the Child Nutrition Program website with the online application process.

### 3. Reimbursement Payments

a. For any school year, severe need reimbursement payments shall be the number of free and reduced price breakfasts, respectively, served to children in eligible schools, multiplied by the applicable severe need reimbursement rates.

b. Schools approved for severe-need funding shall file claims monthly and will receive funding on a monthly basis.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2118 (December 2001), amended LR 31:

## Chapter 7. Meal Planning and Service

### §737. Extra Sales

A. Extra items may be sold only to those who have received a complete meal. The purchase of extras must occur at the time the meal is received unless the SFA has a procedure in place to determine that a student has received a complete meal. À-la-carte meal service is prohibited. Extra sale items must meet component requirements as defined by Enhanced Food-Based Menu regulations for the Child Nutrition Programs or must be an item offered on the menu that day. The only exceptions are that milkshakes, yogurt, frozen yogurt, ice cream, and ice milk (as defined by the Louisiana Sanitary Code) may be sold as extras. Full-strength juice, and milk, and bottled water (unflavored with no additives) may be sold at any time during the day to students and adults whether or not they have purchased a meal.

B. Schools must maintain proper accountability for extra sale items and must recover the full cost of producing the extra items plus a profit. At a minimum, these costs shall include food, labor (wages plus benefits), paper and nonfood supplies, transportation and utilities. (Refer to §327.A.1.i: Pricing for Extra Sales Items, for specific information concerning pricing procedures.) All monies earned or received must accrue to the school food service account.

C. Adults must be charged for all second servings. If extra sales are available at the school, each item would be sold to the adult at the appropriate price. If extra sales are not available, the adult must pay the at cost price of the meal regardless of the number of menu items served.

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

HISTORICAL NOTE: Promulgated by Board of Elementary and Secondary Education in LR 27:2151 (December 2001), amended LR 29:2029 (October 2003), LR 31:

### Family Impact Statement

1. Will the proposed Rule effect the stability of the family? No.

2. Will the proposed Rule effect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule effect the functioning of the family? No.

4. Will the proposed Rule effect family earnings and family budget? No.

5. Will the proposed Rule effect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit comments until 4:30 p.m., June 9, 2005, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Bulletin 1196 Louisiana Food and Nutrition Programs, Policies of Operation

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no estimated costs (savings) to state or local governmental units. This is a revision of Bulletin 1196 which has incorporated all Federal and State policy changes which have already been implemented by the sponsors. There will be no costs due to the fact the Bulletin will be on the Website and can be downloaded.

The estimated cost for printing this policy change and first page of the fiscal and economic impact statement in the Louisiana Register is approximately \$136.00. Funds are currently budgeted for this purpose.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no estimated effect on revenue collection of state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affect persons or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
0504#079

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 1566 Guidelines for Pupil Progression  
High Stakes Testing Policy  
(LAC 28:XXXIX.503, 905, 911, 1101, 1301 and 1501)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 1566 Guidelines for Pupil Progression* (LAC 28, Part Number XXXIX). The State Board of Elementary and Secondary Education at its January 2005 meeting made revisions to the High Stakes Testing Policy, which is an addendum to Bulletin 1566,

*Guidelines for Pupil Progression*, and to Bulletin 1566 itself. The rule changes include:

- A revision in the High Stakes Testing Policy as it relates to the passing standard for eighth grade students. Beginning in the spring of 2006, eighth graders will have to score *Basic* on either the English Language Arts or Mathematics component of LEAP 21 and *Approaching Basic* on the other to move to the ninth grade.
- A revision in the eighth grade retention policy as contained in the High Stakes Testing Policy. As a result of the policy change:
  - After the summer retest, a school system, through its superintendent, may consider a waiver for an eighth grade student who has scored at the *Approaching Basic* level on both the English Language Arts and Mathematics component of LEAP 21. The LEA may grant the waiver in accordance with the local Pupil Progression Plan provided the following criteria are met.
    - The student may be promoted to the ninth grade, provided that he or she has scored at the *Approaching Basic* level on both the English Language Arts and Mathematics components of LEAP 21, has attended the LEAP 21 summer remediation program offered by the District, and has taken the summer retest administered at the conclusion of the summer program.
    - The student must retake the component(s) (English Language Arts and/or Mathematics) of the retest on which a score of *Approaching Basic* or below was attained on the spring test. At a minimum, the student shall score *Approaching Basic* on the English Language Arts and the Mathematics component(s) of the summer retest.
    - Any student who scores less than *Approaching Basic* on either component of the summer retest is ineligible for the waiver consideration.
  - The student who has repeated the eighth grade may be either:
    - retained again in the eighth grade;
    - promoted to the ninth grade, provided that the student has scored at the *Approaching Basic* level on either the English Language Arts or Mathematics component of LEAP 21, has attended the LEAP 21 summer remediation program offered by the District in, at a minimum, the *Unsatisfactory* subject, and has taken the summer retest administered at the conclusion of the summer program. If promoted with an *Unsatisfactory* on the English Language Arts or Mathematics component of LEAP 21, the student must enroll in and pass a high school remedial course in the *Unsatisfactory* subject (English language arts or mathematics) before enrolling in or earning Carnegie credit for English or mathematics; or
    - placed in the Pre-GED/Skills Options Program that shall be available to students who meet criteria as outlined in *Bulletin 741: Louisiana Handbook for School Administrators*, §2907.

- Students in the Pre-GED/Skills Options Program will take the ninth grade *i*LEAP.
- As a result of the eighth grade waiver consideration, the appeals process as contained in the High Stakes Testing Policy was eliminated as an option for eighth grade students.

**Title 28  
EDUCATION**

**Part XXXIX. Bulletin 1566 Guidelines for Pupil Progression**

**Chapter 5. Placement Policies; State Requirements**

**§503. Regular Placement**

A. Promotion Grades K-12

1. Promotion from one grade to another for regular students and students with disabilities shall be based on the following statewide evaluative criteria.

a. - b.i. ...

ii.(a). No fourth or eighth grade student shall be promoted until he or she has scored at or above the "Basic" achievement level on the English Language Arts or Mathematics components of the LEAP for the 21st century (LEAP 21) and at the "Approaching Basic" achievement level on the other (hereafter referred to as the "Basic/Approaching Basic" combination).

(b). Exceptional students participating in LEAP 21 must be provided with accommodations as noted in the students' IEPs.

c. Exceptions to this policy include:

i. Policy Override. A given student scores at the "Unsatisfactory" level in English Language Arts or Mathematics and scores at the "Mastery" or "Advanced" level in the other; and participates in the summer school and retest offered by the LEA. The decision to override is made in accordance with the local Pupil Progression Plan, which may include referral to the School Building Level Committee (SBLC).

ii. Retention Limit (Fourth Grade). The decision to retain a student in the fourth grade more than once as a result of failure to score at or above the "Basic/Approaching Basis" combination on the English Language Arts and Mathematics components of LEAP 21 shall be made by the LEA in accordance with the local Pupil Progression Plan which shall include the following.

(a). A student who has repeated the fourth grade may be promoted to only the fifth grade. A district may apply for a waiver from this part of the policy if their specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education. (See Appendix C, Chapter 15).

(b). A student who has repeated the fourth grade and who is 12 years old on or before September 30 may be promoted according to the Local Pupil Progression Plan.

(c). Students retained in the fourth grade shall retake all four components of the LEAP 21.

(d). For promotional purposes, a student must score at or above the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of the LEAP 21 only one time.

iii. Appeal Process (Fourth Grade). After the summer retest, a school system, through its superintendent, may consider granting an appeal on behalf of individual

students, provided that all of the following criteria have been met.

(a). The student's highest score in English Language Arts and/or Mathematics on either the spring or summer LEAP 21 must fall within 20 scaled score points of the cutoff score for "Basic."

(b). The student shall have a 3.0 grade point average on a 4.0 scale in the subject(s) for which the appeal is being considered.

(c). The student must have attended the LEAP 21 summer remediation program.

(d). The student must have taken the LEAP 21 retest given after the LEAP 21 summer remediation program has been concluded.

(e). The student must have met state-mandated attendance regulations during the regular school year and any locally mandated regulations during the summer remediation program.

(f). The principal and the School Building Level Committee (SBLC) must review student work samples and attest that the student exhibits the ability of performing at or above the *Basic* achievement level in the subject for which the appeal is being considered.

iv. Retention Limit (Eighth Grade). After the summer retest, a school system, through its superintendent, may consider a waiver for an eighth grade student who has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP 21. The LEA may grant the waiver in accordance with the local Pupil Progression Plan provided the following criteria are met.

(a). The student may be promoted to the ninth grade, provided that he or she has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP 21, has attended the LEAP 21 summer remediation program offered by the district, and has taken the summer retest administered at the conclusion of the summer program.

(b). The student must retake the component(s) (English Language Arts and/or Mathematics) of the retest on which a score of "Approaching Basic" or below was attained on the spring test. At a minimum, the student shall score "Approaching Basic" on the English Language Arts and the Mathematics component(s) of the summer retest.

(c). Any student who scores less than "Approaching Basic" on either component of the summer retest is ineligible for the waiver consideration.

v. The student who has repeated the eighth grade may either be:

(a). retained again in the eighth grade;

(b). promoted to the ninth grade, provided that the student has scored at the "Approaching Basic" level on either the English Language Arts or Mathematics component of LEAP 21, has attended the LEAP 21 summer remediation program offered by the District in, at a minimum, the "Unsatisfactory" subject, and has taken the summer retest administered at the conclusion of the summer program. If promoted with an "Unsatisfactory" on the English Language Arts or Mathematics component of LEAP 21, the student must enroll in and pass a high school remedial course in the "Unsatisfactory" subject (English language arts or

mathematics) before enrolling in or earning Carnegie credit for English or mathematics; or

(c). placed in the Pre-GED/Skills Options Program that shall be available to students who meet criteria as outlined in *Bulletin 741: Louisiana Handbook for School Administrators*, §2907.

vi. LEAP 21 Testing

(a). Students repeating the eighth grade will retake all four components of LEAP 21.

(b). Students in the Pre-GED/Skills Options Program will take the ninth grade iLEAP.

vii. Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP 21 Alternate Assessment (LAA). Students with disabilities who participate in the LEAP 21 Alternate Assessment (LAA) shall have promotion decisions determined by the SBLC.

viii. Waiver for Limited English Proficient (LEP) Student. LEP Students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for a LEP student. A LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

ix. Waiver for Extenuating Circumstances. A school system through its superintendent may grant a waiver on behalf of individual students who are unable to participate in LEAP 21 testing or unable to attend LEAP 21 summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation: a physical illness or injury that is acute or catastrophic in nature, a chronic physical condition that is in an acute phase or court ordered custody issues. (Refer to Appendix B, Chapter 13.)

x. State Granted Exceptions. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver from the State Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances. The Department of Education will provide to the State Board of Elementary and Secondary Education detailing state-granted waivers. (Refer to Appendix B, Chapter 13.)

xi. In order to move students toward grade level performance, LEAs shall design and implement additional instructional strategies for those fourth and eighth grade students being retained. The purpose of the additional instructional strategies is to move the students to grade-level proficiency by providing the following: (1) focused instruction in the subject area(s) on which they scored at the "Approaching Basic" and/or "Unsatisfactory" level on LEAP 21, and (2) ongoing instruction in the core subject areas using curricula based on State-level content standards and the Grade Level Expectations. LEAs are also encouraged to design and implement additional instructional strategies for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the "Basic/Approaching Basic" combination on LEAP 21.

xii. Summer remediation programs and end-of-summer retests must be offered by school systems at no cost to students who did not take the Spring LEAP 21 tests or who failed to achieve the required level on LEAP 21.

(a). All students with disabilities who participate in LEAP 21 testing should receive services along with regular education students in summer programs, with special supports provided as needed.

(b). Students with disabilities who participate in LEAP 21 Alternate Assessment (LAA) are not eligible to attend LEAP 21 summer remediation programs.

xiii. The aforementioned policies will be in effect from spring 2006 through spring 2008. The promotion policy will be reviewed in 2008.

xiv. Other Requirements

(a). Each plan shall include the function of the school building level committee/student assistance team as it relates to student promotion. Refer to Appendix B (Chapter 13) for complete text of the High Stakes Testing Policy.

(b). Schools can only make recommendations to parents regarding student enrollment in kindergarten, since kindergarten is not mandatory.

B. - D.1.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 2000), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:123 (February 2003), LR 30:407 (March 2004), LR 31:

## **Chapter 9. Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program**

### **§905. Definition and Purpose**

A. - B.2. ...

3. Beginning in the summer of 2006, remediation in the form of summer school shall be provided to both fourth and eighth grade students who score at the "Approaching Basic" or "Unsatisfactory" level on LEAP 21st for the 21st Century (LEAP 21) English Language Arts or Mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

4. Remediation shall be provided to students who score at the "Unsatisfactory" level on LEAP for the 21st Century (LEAP 21) Science and Social Studies tests.

5. Remediation is recommended for fourth and eighth grade students who score at the "Approaching Basic" level on LEAP for the 21st Century (LEAP 21) English Language Arts, Mathematics, Science, or Social Studies tests.

6. Beyond the goal of student achievement in grade appropriate skills, additional goals are to give students a sense of success, to prevent alienation from school, and to prevent their early departure from school (R.S. 17:395 B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 28:1189 (June 2002), LR 30:409 (March 2004), LR 31:

### **§911. Criteria for State Approval**

A. - C.3. ...

a. For the Graduation Exit Examination for the 21st Century (GEE 21), remediation shall be provided in English Language Arts, Mathematics, Science, and Social Studies. Students shall be offered 50 hours of remediation in each content area they do not pass.

b. Beginning in the summer of 2006, remediation in the form of summer school shall be provided to both fourth and eighth grade students who score at the "Approaching Basic" or "Unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English Language Arts or Mathematics tests. Summer Remediation shall consist of a minimum of 50 hours of instructions per subject.

c. Remediation shall be provided to students who score at the "Unsatisfactory" level on LEAP for the 21st Century (LEAP 21) science and social studies tests.

d. Remediation is recommended for fourth and eighth grade students who score at the "Approaching Basic" level on LEAP for the 21st Century (LEAP 21) English Language Arts, Mathematics, Science, or Social Studies tests.

e. Instruction shall include but not be limited to the philosophy, the methods, and the materials included in local curricula that are based upon State Content Standards in mathematics, English language arts, science and social studies (Board Policy 3.01.08).

f. Remedial methods and materials shall supplement and reinforce those methods and materials used in the regular program (Board Policy).

g. Each student achieving mastery criteria shall continue receiving instruction for maintenance of grade appropriate skills. The amount of instruction shall be based upon student need (R.S. 17:395.E).

D. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2175 (November 1999), amended LR 27:189 (February 2001), LR 30:409 (March 2004), LR 31:

## **Chapter 11. Appendix A**

### **§1101. Definition of Terms**

A. - A.1. ...

\*\*\*

*LEAP 21 Summer Remediation Program* The summer school program offered by the LEA for the specific purpose of preparing students to pass the LEAP 21 summer retest in English language arts, or mathematics.

\*\*\*

2. - 2.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2176 (November 1999), amended LR 27:190 (February 2001), LR 31:

## **Chapter 13. Appendix B**

### **§1301. LEAP for the 21st Century, High Stakes Testing Policy**

A. LEAP for the 21st Century High Stakes Testing Policy (Grades 4 and 8)

1. A student may not be promoted to the fifth or ninth grade until he or she has scored at or above the "Basic" achievement level on either the English Language Arts or Mathematics component on the fourth or eighth grade LEAP for the 21st Century (LEAP 21) and at the "Approaching Basic" achievement level on the other (hereafter referred to as the "Basic/Approaching Basic" combination). For promotional purposes; however, a student shall score at or above the "Basic/Approaching Basic" combination on the

English Language Arts and Mathematics components of LEAP 21 only one time.

2. A parent/student/school compact that outlines the responsibilities of each party will be required for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of the fourth or eighth grade LEAP 21, as well as for students who were retained in grades 4 or 8.

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP 21 tests or who scored "Approaching Basic" and/or "Unsatisfactory" on the English Language Arts and/or Mathematics component(s) on the spring tests.

a. A student who failed to achieve the "Basic/Approaching Basic" combination is not required to attend the LEA-offered LEAP 21 summer remediation program in order to be eligible for the summer retest.

b. All students with disabilities who participate in LEAP 21 should receive services along with regular education students in summer remediation programs, with special supports provided as needed.

c. Students with disabilities who participate in LEAP Alternate Assessment (LAA) are not eligible to attend the LEAP 21 summer remediation programs.

4. In order to move students toward grade level performance, LEAs shall design and implement additional instructional strategies for those fourth and eighth grade students being retained. The purpose of the additional instructional strategies is to move the students to grade level proficiency by providing the following: (1) focused instruction in the subject area(s) on which they scored at the "Approaching Basic" and/or "Unsatisfactory" level on LEAP 21, and (2) ongoing instruction in the core subject areas using curricula based on state-level content standards and the grade level expectations. LEAs are also encouraged to design and implement additional instructional strategies for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the "Basic/Approaching Basic" combination on LEAP 21.

#### 5. Promotion/Retention Policies

##### a. Grade 4

i. A student may not be promoted to the fifth grade until he or she has scored at or above the "Basic" achievement level on either the English Language Arts or Mathematics component on the fourth grade LEAP 21 and at the "Approaching Basic" achievement level on the other.

ii. The decision to retain a student in the fourth grade more than once as a result of his/her failure to achieve the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of LEAP 21 shall be made by the LEA in accordance with the local Pupil Progression Plan which shall include the following.

(a). A student who has repeated the fourth grade may be promoted to only the fifth grade. A district may apply for a waiver from this part of the policy if their specific plan is presented to the Department of Education, and the State Superintendent of Education approves it.

(b). However, a student who has repeated the fourth grade and who is 12 years old on or before September

30 may be promoted according to the local Pupil Progression Plan.

iii. After the summer retest, a school system, through its superintendent, may consider granting an appeal on behalf of individual students, provided that all of the following criteria have been met.

(a). The student's highest score in English Language Arts and/or Mathematics on either the spring or summer LEAP 21 must fall within 20 scaled score points of the cutoff score for "Basic."

(b). The student shall have a 3.0 grade point average on a 4.0 scale in the subject(s) for which the appeal is being considered.

(c). The student must have attended the LEAP 21 summer remediation program.

(d). The student must have taken the LEAP 21 retest given after the LEAP 21 summer remediation program has been concluded.

(e). The student must have met state-mandated attendance regulations during the regular school year and any locally mandated regulations during the summer remediation program.

(f). The principal and the School Building Level Committee (SBLC) must review student work samples and attest that the student exhibits the ability of performing at or above the *Basic* achievement level in the subject for which the appeal is being considered.

##### iv. LEAP 21 Testing

(a). Students retained in the fourth grade shall retake all four components of LEAP 21.

##### b. Grade 8

i. A student may not be promoted to the ninth grade until he or she has scored at or above the "Basic" achievement level on either the English Language Arts or Mathematics component on the eighth grade LEAP 21 and at the "Approaching Basic" achievement level on the other.

ii. After the summer retest, a school system, through its superintendent, may consider a waiver for an eighth grade student who has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP 21. The LEA may grant the waiver in accordance with the local Pupil Progression Plan provided the following criteria are met.

(a). The student may be promoted to the ninth grade, provided that he or she has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP 21, has attended the LEAP 21 summer remediation program offered by the district, and has taken the summer retest administered at the conclusion of the summer program.

(b). The student must retake the component(s) (English Language Arts and/or Mathematics) of the retest on which a score of "Approaching Basic" or below was attained on the spring test. At a minimum, the student shall score "Approaching Basic" on the English Language Arts and the Mathematics component(s) of the summer retest.

(c). Any student who scores less than "Approaching Basic" on either component of the summer retest is ineligible for the waiver consideration.

iii. The student who has repeated the eighth grade may be either:

(a). retained again in the eighth grade;



(b). promoted to the ninth grade, provided that the student has scored at the "Approaching Basic" level on either the English Language Arts or Mathematics component of LEAP 21, has attended the LEAP 21 summer remediation program offered by the District in, at a minimum, the "Unsatisfactory" subject, and has taken the summer retest administered at the conclusion of the summer program. If promoted with an "Unsatisfactory" on the English Language Arts or Mathematics component of LEAP 21, the student must enroll in and pass a high school remedial course in the "Unsatisfactory" subject (English language arts or mathematics) before enrolling in or earning Carnegie credit for English or mathematics; or

(c). placed in the Pre-GED/Skills Options Program that shall be available to students who meet criteria as outlined in *Bulletin 741: Louisiana Handbook for School Administrators*, §2907.

iv. LEAP 21 Testing

(a). Students repeating the eighth grade will retake all four components of LEAP 21.

(b). Students in the Pre-GED/Skills Options Program will take the ninth grade iLEAP.

6. Exceptions to the High Stakes Testing policy may include:

a. Policy Override

ii. The local school system (LEA) may override the state policy for students scoring at the "Unsatisfactory" level in English language arts or mathematics, if the student scores at the "Mastery" or "Advanced" level in the other, provided that:

(a). the decision is made in accordance with the local Pupil Progression Plan, which may include a referral to the School Building Level Committee (SBLC);

(b). the student has participated in both the spring and summer administrations of LEAP 21 and has attended the summer remediation program offered by the LEA (the student shall participate in the summer retest only on the subject that he/she scored at the "Unsatisfactory" achievement level during the spring test administration); and

(c). parental consent is granted.

b. Students with Disabilities Eligible under the Individuals with Disabilities Education Act (IDEA) Participating in LEAP Alternate Assessments (LAA)

i. Students with disabilities who participate in the LEAP Alternate Assessment (LAA) shall have promotion decisions determined by the SBLC.

c. Waiver for Limited English Proficient (LEP) Students

i. LEP students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for a LEP student. A LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

d. Waiver for Extenuating Circumstances

i. A school system, through its superintendent, may grant a waiver on behalf of individual students who are unable to participate in LEAP 21 testing or unable to attend LEAP 21 summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

(a). a physical illness or injury that is acute or catastrophic in nature;

(b). a chronic physical condition that is in an acute phase;

(c). court-ordered custody issues.

ii. Documentation

(a). *Physical Illness* Appropriate documentation must include verification that the student is under the medical care of a licensed physician for illness, injury, or a chronic physical condition that is acute or catastrophic in nature. Documentation must include a statement verifying that the illness, injury, or chronic physical condition exists to the extent that the student is unable to participate in testing and/or remediation.

(b). *Custody Issues* Certified copies of the court-ordered custody agreements must be submitted to the LEA at least 10 school days prior to summer remediation or retesting.

iii. Student Eligibility/Retest Requirements:

(a). Students who meet the criteria for extenuating circumstances under the *physical illness, chronic physical condition, or court-ordered custody category* related to LEAP 21; and

(b). who are unable to participate in both the spring and the summer administration of LEAP 21; or

(c). who failed to achieve the "Basic/Approaching Basic" combination on the spring administration of LEAP 21 English Language Arts and Mathematics tests and are unable to participate in LEAP 21 summer retest:

(i). shall take the Iowa Tests for grade placement within 10 school days of returning to school, which may include hospital/homebound instruction, in order to ensure the appropriate level of instruction;

(ii). must score at or above the cutoff score on the selected form of the Iowa Tests for grade placement to be promoted to the fifth or ninth grade; and

(iii). are not eligible for a retest. These students may be eligible for the policy override or appeals process in accordance with the local Pupil Progression Plan.

Note: The appeals process is available only to fourth grade students.

(d). Students who meet the criteria for extenuating circumstances under the *physical illness, chronic physical condition, or court-ordered custody category* related to LEAP 21; and

i. who are unable to participate in the spring testing and/or summer remediation, including the provision of remediation through hospital/home bound instruction, are required to take the LEAP 21 summer retest. These students may be eligible for the policy override or appeals process in accordance with the local Pupil Progression Plan.

Note: The appeals process is available only to fourth grade students.

e. State-Granted Exception

i. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver from the State Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances.

ii. The Department of Education will provide a report to the State Board of Elementary and Secondary Education detailing state-granted waivers.

iii. Documentation

(a). *LEA Error* The LEA superintendent or parent must provide the State Superintendent of Education with school- and student-level documentation detailing the error, how the error occurred, and how the error will be corrected so that it will not occur again in the future.

(b). *Other Unique Situations* Documentation must be provided to the State Superintendent of Education detailing the unique situation and justifying why a waiver should be granted.

iv. Testing/Promotion Decisions

(a). The Department of Education will communicate to the LEAs the means for establishing promotional decisions for those students who have received a state-granted waiver.

7. The promotion policies outlined above will be reviewed in 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:1008 (July 2001), amended LR 27:1683 (October 2001), LR 28:1189 (June 2002), LR 29:123 (February 2003), LR 31:

**Chapter 15. Appendix C**

**§1501. Waiver Request**

A. - A.4.a.i. ...

5. Section V

a. Assurances

i. I assure that the fourth grade transitional program described in the amended 2005-2006 Pupil Progression Plan meets all of the requirements as outlined in Sections I, II, III, and IV of this document.

ii. Based upon this submitted assurance, the \_\_\_\_\_ School System is requesting a waiver of the High Stakes Testing Policy to allow for the implementation of a fourth grade transitional program which meets the purpose as described in Section I with the option of promoting students to the sixth grade.

iii. School systems applying for this waiver must submit their request by Friday, July 15, 2005, and receive approval from the State Superintendent of Education prior to the implementation of a transitional (4.5) program that provides the option of promotion to the sixth grade. School systems must submit all required documentation as listed in Section IV, and if approved, Sections I, II, and III must be included in the school system's 2005-2006 Pupil Progression Plan.

iv. Signature of School System Superintendent:

v. Date: \_\_\_\_\_

6. Section VI

a. Approved/Denied: (circle one)

\_\_\_\_\_  
Cecil J. Picard

State Superintendent of Education

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:413 (March 2004), amended LR 31:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All family impact statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule effect the stability of the family? No.

2. Will the proposed Rule effect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule effect the functioning of the family? No.

4. Will the proposed Rule effect family earnings and family budget? No.

5. Will the proposed Rule effect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit comments until 4:30 p.m., June 9, 2005, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 1566 Guidelines for Pupil  
Progression High Stakes Testing Policy**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be an additional implementation cost to state or local government. Because the passing score for LEAP 21 was raised, more students will probably need remediation (summer and tutoring). It is estimated that approximately 10 percent to 15 percent more students will need this remediation. Remediation was funded at \$118 per unit for summer 2005 and \$118 per student for tutoring. The exact cost as a result of this rule change can not be determined at this time because of the possible increase or decrease in the number of fourth grade students needing remediation services. If fewer fourth graders need remediation, the implementation cost for additional eighth graders will be minimal. If the fourth grade numbers rise the implementation cost will have to rise also. We will need to wait for the 2006 test results to be released. The source of funding will be State General Funds. There may be an additional cost to local governmental units Local school boards, because of the possible increased cost to run summer remediation programs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collection of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

School systems personnel, students with disabilities and the general public will be affected by the policies in Bulletin 1566 because of better accountability and a more informed public.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There may be an effect on employment within the local school districts due to the anticipated larger number of students attending summer school.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0504#080

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Environmental Assessment**

**Cleanup Package**

(LAC 33:I.4503, 4705; III.5151; V.529, 1109, 1115, 1117, 1705, 1907, 1917, 3023, 3711, 3719, 4037, 4901; VII:115, 721; IX.2505; XI.103, 1121, 1139)(OS063)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:I.4503, 4705; III.5151; V.529, 1109, 1115, 1117, 1705, 1907, 1917, 3023, 3711, 3719, 4037, 4901; VII:115, 721; IX.2505; XI.103, 1121, 1139 (Log #OS063).

This proposed Rule will correct typographical errors, edit references that are incorrect, and update regulations to show consistency with other Rules. This rulemaking is necessary due to inconsistent wording of regulations, typographical errors, and incorrect references. The basis and rationale for this Rule are to incorporate the necessary changes into the regulations.

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

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary**

**Subpart 3. Laboratory Accreditation**

**Chapter 45. Policy and Intent**

**§4503. Definitions**

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

\*\*\*

*Test Category* Any one of the 11 categories listed in LAC 33:I.4705.B in which a laboratory may request department accreditation for a specific test or analysis.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:918 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1434 (July 2000), amended by the Office of Environmental Assessment, LR 31:

**Chapter 47. Program Requirements**

**§4705. Categories of Accreditation**

A. ...

B. A laboratory may apply for accreditation in any one or more of the eight fields of testing (e.g., air emissions, wastewater/surface water, etc.) and in one or more of the 11 test categories applicable to the field(s) of testing selected. The laboratory shall be accredited in those parameters within the test category(ies) for which the laboratory demonstrates acceptable performance on proficiency samples (when available) and meets all other requirements of the department accreditation program. The accreditation test categories are as follows:

B.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), LR 26:2443 (November 2000), repromulgated LR 27:38 (January 2001), amended by the Office of Environmental Assessment, LR 31:

**Part III. Air**

**Chapter 51. Comprehensive Toxic Air Pollutant  
Emission Control Program**

**Subchapter M. Asbestos**

**§5151. Emission Standard for Asbestos**

A. - J.4.d. ...

i. a copy of the waste shipment record for which a confirmation of delivery was not received; and

ii. a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts;

J.4.e. - P.2.a. ...

b. When response actions are performed by contracted personnel, those persons shall be accredited.

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 17:1204 (December 1991), repealed and repromulgated LR 18:1121 (October 1992), amended LR 20:1277 (November 1994), LR 24:27 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2462 (November 2000), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 30:2022 (September 2004), LR 31:

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental  
Quality Hazardous Waste**

**Chapter 5. Permit Application Contents**

**Subchapter E. Specific Information Requirements**

**§529. Specific Part II Information Requirements for  
Incinerators**

Except as LAC 33:V.Chapter 31 and Subsection F of this Section provide otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of Subsection A, B, or C of this Section:

A. when seeking an exemption under LAC 33:V.3105.B or C (ignitable, corrosive, or reactive wastes only):

1. documentation that the waste is listed as a hazardous waste in LAC 33:V.Chapter 49, solely because it

is ignitable (Hazard Code I) or corrosive (Hazard Code C) or both; or

2. documentation that the waste is listed as a hazardous waste in LAC 33:V.Chapter 49, solely because it is reactive (Hazard Code R) for characteristics other than those listed in LAC 33:V.4903.C.4 and C.5, and will not be burned when other hazardous wastes are present in the combustion zone; or

3. documentation that the waste is a hazardous waste solely because it possesses the characteristics of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous waste under LAC 33:V.4903; or

4. documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in LAC 33:V.4903.C.1, 2, 3, 6, 7, or 8, and that it will not be burned when other hazardous wastes are present in the combustion zone; or

B. - C.5.b. ...

6. the expected incinerator operation information to demonstrate compliance with LAC 33:V.3111 and 3117, including:

C.6.a. - D.1. ...

2. the incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under LAC 33:V.3117) operating conditions that will ensure that the performance standards in LAC 33:V.3111 will be met by the incinerator;

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(24)(a) and 2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 22:817 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:2199 (November 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:292 (March 2001), LR 29:319 (March 2003), amended by the Office of Environmental Assessment, LR 31:

## **Chapter 11. Generators**

### **Subchapter A. General**

#### **§1109. Pre-Transport Requirements**

A. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Public Safety regulations and packaging under LAC 33:V.Subpart 2.Chapter 103.

1. Hazardous waste, liquid, or solid not otherwise specified must meet the requirement of Subchapter C of 49 CFR, and/or the Louisiana Hazardous Material Regulations Subchapter C. Special attention must be directed towards LAC 33:V.Subpart 2.Chapter 105.

2. - 3. ...

B. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable transportation regulations on hazardous materials of the Louisiana Department of Public Safety and Corrections or its successor agency under LAC 33:V.Subpart 2.Chapter 105.

C. Marking. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and

information displayed in accordance with the Department of Public Safety regulations (see Department of Public Safety regulation LAC 33:V.Subpart 2.Chapter 105).

Hazardous Waste: Federal and state law prohibits improper disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address \_\_\_\_\_

Manifest Document Number \_\_\_\_\_

D. Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Public Safety regulations for hazardous materials under LAC 33:V.Subpart 2.Chapter 105.

E. - E.1.a. ...

i. in containers and the generator complies with the applicable requirements of LAC 33:V.2103, 2105, 2107, 2109.A, 2113, 2115, and Chapter 43.Subchapters Q, R, and V; and/or

ii. ...

iii. on drip pads and the generator complies with LAC 33:V.2801, 2803, 2805, 2807, 2809, and 2811 and maintains the following records at the facility:

1.a.iii.(a). - 7. ...

a. the generator complies with the requirements of LAC 33:V.2103, 2105, 2107, 2109.A, and 2115;

7.b. - 10.d.i. ...

(a). in containers and the generator complies with the applicable requirements of LAC 33:V.2103, 2105, 2107, 2109.A, 2113, 2115, and Chapter 43.Subchapters Q, R, and V; and/or

10.d.i.(b). - 12. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:293 (March 2001), LR 27:709, 716 (May 2001), LR 27:1014 (July 2001), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 31:

#### **§1115. Preparedness and Prevention**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), repealed by the Office of Environmental Assessment, LR 31:

#### **§1117. Contingency Plan**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR

10:496 (July 1984), repealed by the Office of Environmental Assessment, LR 31:

## **Chapter 17. Air Emission Standards**

### **Subchapter A. Process Vents**

#### **§1705. Applicability**

A. - A.2.Note. ...

3. The requirements of this Subchapter do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this Subchapter are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR Part 60, Part 61, or Part 63. The documentation of compliance under regulations at 40 CFR Part 60, Part 61, or Part 63 shall be kept with, or made readily available with, the facility operating record.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 18:723 (July 1992), LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1698 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:294 (March 2001), amended by the Office of Environmental Assessment, LR 31:

## **Chapter 19. Tanks**

### **§1907. Containment and Detection of Releases**

A. - E.2.e. ...

i. meets the definitions of ignitable waste under LAC 33:V.4903.B; or

ii. meets the definition of reactive waste under LAC 33:V.4903.D, and may form an ignitable or explosive vapor;

E.2.f. - I.5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 14:790 (November 1988), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of Environmental Assessment, LR 31:

### **§1917. Special Requirements for Ignitable or Reactive Wastes**

A. - A.1. ...

a. the resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under LAC 33:V.4903.B or D; and

A.1.b. - B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 13:651 (November 1987), amended LR 22:819 (September 1996), amended by the Office of Environmental Assessment, LR 31:

## **Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces**

### **§3023. Standards for Direct Transfer**

A. - D.1. ...

2. the use and management requirements of LAC 33:V.Chapter 43.Subchapter H, except for LAC 33:V.4417

and 4425 except that, in lieu of the special requirements of LAC 33:V.4427 for ignitable or reactive waste, the owner or operator may comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code," (1977 or 1981), as incorporated by reference at LAC 33:V.110. The owner or operator must obtain and keep on file at the facility a written certification by the local fire marshal that the installation meets the subject NFPA codes; and

D.3.-E.6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:826 (September 1996), amended by the Office of Environmental Assessment, LR 31:

## **Chapter 37. Financial Requirements**

### **Subchapter B. Post-Closure Requirements**

#### **§3711. Financial Assurance for Post-Closure Care**

The owner or operator of a hazardous waste management unit subject to the requirements of LAC 33:V.3709 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. Under this Section, the owner or operator must choose from the options as specified in Subsections A-F of this Section, which choice the administrative authority must find acceptable based on the application and the circumstances.

A. - F.5. ...

6. If the owner or operator no longer meets the requirements of LAC 33:V.3711.F.1, he must send notice to the Office of Management and Finance, Financial Services Division, of intent to establish alternate financial assurance as specified in this Part. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

F.7. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 14:791 (November 1988), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1512 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2490 (November 2000), amended by the Office of Environmental Assessment, LR 31:

### **Subchapter F. Financial and Insurance Instruments**

#### **§3719. Wording of the Instruments**

A. - E. ...

F. Closure Guarantee. A letter from the chief financial officer, as specified in LAC 33:V:3707.F.3 or 3711.F.3 or 4403.E.3 or 4407.E.3, must be worded as follows, except

that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER  
(Closure and/or Post-Closure Care)  
\* \* \*

[See Prior Text in Letter]

G. Liability Coverage Guarantee. A letter from the chief financial officer, as specified in LAC 33:V.3715.F or 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER  
(Liability Coverage)  
\* \* \*

[See Prior Text in Letter]

PART A. LIABILITY COVERAGE FOR SUDDEN AND  
NONSUDDEN OCCURRENCES

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used.]

\* \* \*

[See Prior Text in Letter]

H. - N.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:686 (July 1985), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:47 (January 1990), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1514 (November 1997), repromulgated LR 23:1684 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2493 (November 2000), amended by the Office of Environmental Assessment, LR 30:2023 (September 2004), LR 31:

## Chapter 40. Used Oil

### Subchapter D. Standards for Used Oil Transporter and Transfer Facilities

#### §4037. Tracking

A. - A.4. ...

5. the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/refiner who provided the used oil for transport. Intermediate rail transporters are not required to sign the record of acceptance.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266, 267 (March 1995), amended by the Office of Environmental Assessment, LR 31:

### Chapter 49. Lists of Hazardous Wastes

[Comment: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes) (LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).]

#### §4901. Category I Hazardous Wastes

A. - F. Table 4. ...

G. Constituents that Serve as a Basis for Listing Hazardous Waste. Table 6 of this Section lists constituents that serve as a basis for listing hazardous waste.

Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste
<b>EPA Hazardous Waste Number F001</b>
Tetrachloroethylene; methylene chloride; trichloroethylene; 1,1,1-trichloroethane; carbon tetrachloride; chlorinated fluorocarbons
<b>EPA Hazardous Waste Number F002</b>
Tetrachloroethylene; methylene chloride; trichloroethylene; 1,1,1-trichloroethane; 1,1,2-trichloroethane; chlorobenzene; 1,1,2-trichloro-1,2,2-trifluoroethane; ortho-dichlorobenzene; trichlorofluoromethane
<b>EPA Hazardous Waste Number F003</b>
N.A.
<b>EPA Hazardous Waste Number F004</b>
Cresols and cresylic acid; nitrobenzene
<b>EPA Hazardous Waste Number F005</b>
Toluene; methyl ethyl ketone; carbon disulfide; isobutanol; pyridine; 2-ethoxyethanol; benzene; 2-nitropropane
<b>EPA Hazardous Waste Number F006</b>
Cadmium; hexavalent chromium; nickel; cyanide (complexed)
<b>EPA Hazardous Waste Number F007</b>
Cyanide (salts)
<b>EPA Hazardous Waste Number F008</b>
Cyanide (salts)
<b>EPA Hazardous Waste Number F009</b>
Cyanide (salts)
<b>EPA Hazardous Waste Number F010</b>
Cyanide (salts)
<b>EPA Hazardous Waste Number F011</b>
Cyanide (salts)
<b>EPA Hazardous Waste Number F012</b>
Cyanide (complexed)
<b>EPA Hazardous Waste Number F019</b>
Hexavalent chromium; cyanide (complexed)
<b>EPA Hazardous Waste Number F020</b>
Tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts
<b>EPA Hazardous Waste Number F021</b>
Penta- and hexachlorodibenzo-p-dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives
<b>EPA Hazardous Waste Number F022</b>
Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans
<b>EPA Hazardous Waste Number F023</b>
Tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts
<b>EPA Hazardous Waste Number F024</b>
Chloromethane; dichloromethane; trichloromethane; carbon tetrachloride; chloroethylene; 1,1-dichloroethane; 1,2-dichloroethane; trans-1,2-dichloroethylene; 1,1-dichloroethylene; 1,1,1-trichloroethane; 1,1,2-trichloroethane; trichloroethylene; 1,1,1,2-tetrachloroethane; 1,1,2,2-tetrachloroethane; tetrachloroethylene; pentachloroethane; hexachloroethane; allyl chloride (3-chloropropene); dichloropropane; dichloropropene; 2-chloro-1,3-butadiene; hexachloro-1,3-butadiene; hexachlorocyclopentadiene; hexachlorocyclohexane; benzene; chlorobenzene; dichlorobenzenes; 1,2,4-trichlorobenzene; tetrachlorobenzene; pentachlorobenzene; hexachlorobenzene; toluene; naphthalene
<b>EPA Hazardous Waste Number F025</b>
Chloromethane; dichloromethane; trichloromethane; carbon tetrachloride; chloroethylene; 1,1-dichloroethane; 1,2-dichloroethane; trans-1,2-dichloroethylene; 1,1-dichloroethylene; 1,1,1-trichloroethane; 1,1,2-trichloroethane; trichloroethylene; 1,1,1,2-tetrachloroethane; 1,1,2,2-tetrachloroethane; tetrachloroethylene; pentachloroethane; hexachloroethane; allyl chloride (3-chloropropene); dichloropropane; dichloropropene; 2-chloro-1,3-butadiene; hexachloro-1,3-butadiene; hexachlorocyclopentadiene; benzene; chlorobenzene; dichlorobenzenes; 1,2,4-trichlorobenzene; tetrachlorobenzene; pentachlorobenzene; hexachlorobenzene; toluene; naphthalene
<b>EPA Hazardous Waste Number F026</b>
Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans

<b>Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste</b>
<b>EPA Hazardous Waste Number F027</b>
Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts
<b>EPA Hazardous Waste Number F028</b>
Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts
<b>EPA Hazardous Waste Number F032</b>
Benz(a)anthracene; benzo(a)pyrene; dibenz(a,h)anthracene; indeno(1,2,3-cd)pyrene; pentachlorophenol; arsenic; chromium; tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins; tetra-, penta-, hexa-, heptachlorodibenzofurans
<b>EPA Hazardous Waste Number F034</b>
Benz(a)anthracene; benzo(k)fluoranthene; benzo(a)pyrene; dibenz(a,h)anthracene; indeno(1,2,3-cd)pyrene; naphthalene; arsenic; chromium
<b>EPA Hazardous Waste Number F035</b>
Arsenic; chromium; lead
<b>EPA Hazardous Waste Number F037</b>
Benzene; benzo(a)pyrene; chrysene; lead; chromium
<b>EPA Hazardous Waste Number F038</b>
Benzene; benzo(a)pyrene; chrysene; lead; chromium
<b>EPA Hazardous Waste Number F039</b>
All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under LAC 33:V.2247, Table 2
<b>EPA Hazardous Waste Number K001</b>
Pentachlorophenol; phenol; 2-chlorophenol; p-chloro-m-cresol; 2,4-dimethylphenol; 2,4-dinitrophenol; trichlorophenols; tetrachlorophenols; 2,4-dinitrophenol; creosote; chrysene; naphthalene; fluoranthene; benzo(b)fluoranthene; benzo(a)pyrene; indeno(1,2,3-cd)pyrene; benz(a)anthracene; dibenz(a)anthracene; acenaphthalene
<b>EPA Hazardous Waste Number K002</b>
Hexavalent chromium; lead
<b>EPA Hazardous Waste Number K003</b>
Hexavalent chromium; lead
<b>EPA Hazardous Waste Number K004</b>
Hexavalent chromium
<b>EPA Hazardous Waste Number K005</b>
Hexavalent chromium; lead
<b>EPA Hazardous Waste Number K006</b>
Hexavalent chromium
<b>EPA Hazardous Waste Number K007</b>
Cyanide (complexed); hexavalent chromium
<b>EPA Hazardous Waste Number K008</b>
Hexavalent chromium
<b>EPA Hazardous Waste Number K009</b>
Chloroform; formaldehyde; methylene chloride; methyl chloride; paraldehyde; formic acid
<b>EPA Hazardous Waste Number K010</b>
Chloroform; formaldehyde; methylene chloride; methyl chloride; paraldehyde; formic acid; chloroacetaldehyde
<b>EPA Hazardous Waste Number K011</b>
Acrylonitrile; acetonitrile; hydrocyanic acid
<b>EPA Hazardous Waste Number K013</b>
Hydrocyanic acid; acrylonitrile; acetonitrile
<b>EPA Hazardous Waste Number K014</b>
Acetonitrile; acrylamide
<b>EPA Hazardous Waste Number K015</b>
Benzyl chloride; chlorobenzene; toluene; benzotrichloride
<b>EPA Hazardous Waste Number K016</b>
Hexachlorobenzene; hexachlorobutadiene; carbon tetrachloride; hexachloroethane; perchloroethylene
<b>EPA Hazardous Waste Number K017</b>
Epichlorohydrin; chloroethers [bis(chloromethyl) ether and bis(2-chloroethyl) ether]; trichloropropane; dichloropropanols
<b>EPA Hazardous Waste Number K018</b>
1,2-dichloroethane; trichloroethylene; hexachlorobutadiene; hexachlorobenzene

<b>Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste</b>
<b>EPA Hazardous Waste Number K019</b>
Ethylene dichloride; 1,1,1-trichloroethane; 1,1,2-trichloroethane; tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane); trichloroethylene; tetrachloroethylene; carbon tetrachloride; chloroform; vinyl chloride; vinylidene chloride
<b>EPA Hazardous Waste Number K020</b>
Ethylene dichloride; 1,1,1-trichloroethane; 1,1,2-trichloroethane; tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane); trichloroethylene; tetrachloroethylene; carbon tetrachloride; chloroform; vinyl chloride; vinylidene chloride
<b>EPA Hazardous Waste Number K021</b>
Antimony; carbon tetrachloride; chloroform
<b>EPA Hazardous Waste Number K022</b>
Phenol; tars (polycyclic aromatic hydrocarbons)
<b>EPA Hazardous Waste Number K023</b>
Phthalic anhydride; maleic anhydride
<b>EPA Hazardous Waste Number K024</b>
Phthalic anhydride; 1,4-naphthoquinone
<b>EPA Hazardous Waste Number K025</b>
Meta-dinitrobenzene; 2,4-dinitrotoluene
<b>EPA Hazardous Waste Number K026</b>
<b>Paraldehyde; pyridines; 2-picoline</b>
<b>EPA Hazardous Waste Number K027</b>
Toluene diisocyanate; toluene-2,4-diamine
<b>EPA Hazardous Waste Number K028</b>
1,1,1-trichloroethane; vinyl chloride
<b>EPA Hazardous Waste Number K029</b>
1,2-dichloroethane; 1,1,1-trichloroethane; vinyl chloride; vinylidene chloride; chloroform
<b>EPA Hazardous Waste Number K030</b>
Hexachlorobenzene; hexachlorobutadiene; hexachloroethane; 1,1,1,2-tetrachloroethane; 1,1,2,2-tetrachloroethane; ethylene dichloride
<b>EPA Hazardous Waste Number K031</b>
Arsenic
<b>EPA Hazardous Waste Number K032</b>
Hexachlorocyclopentadiene
<b>EPA Hazardous Waste Number K033</b>
Hexachlorocyclopentadiene
<b>EPA Hazardous Waste Number K034</b>
Hexachlorocyclopentadiene
<b>EPA Hazardous Waste Number K035</b>
Creosote; chrysene; naphthalene; fluoranthene; benzo(b)fluoranthene; benzo(a)pyrene; indeno(1,2,3-cd)pyrene; benzo(a)anthracene; dibenzo(a)anthracene; acenaphthalene
<b>EPA Hazardous Waste Number K036</b>
Toluene; phosphorodithioic and phosphorothioic acid esters
<b>EPA Hazardous Waste Number K037</b>
Toluene; phosphorodithioic and phosphorothioic acid esters
<b>EPA Hazardous Waste Number K038</b>
Phorate; formaldehyde; phosphorodithioic and phosphorothioic acid esters
<b>EPA Hazardous Waste Number K039</b>
Phosphorodithioic and phosphorothioic acid esters
<b>EPA Hazardous Waste Number K040</b>
Phorate; formaldehyde; phosphorodithioic and phosphorothioic acid esters
<b>EPA Hazardous Waste Number K041</b>
Toxaphene
<b>EPA Hazardous Waste Number K042</b>
Hexachlorobenzene; ortho-dichlorobenzene
<b>EPA Hazardous Waste Number K043</b>
2,4-dichlorophenol; 2,6-dichlorophenol; 2,4,6-trichlorophenol
<b>EPA Hazardous Waste Number K044</b>
N.A.
<b>EPA Hazardous Waste Number K045</b>
N.A.
<b>EPA Hazardous Waste Number K046</b>
Lead
<b>EPA Hazardous Waste Number K047</b>
N.A.

Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste
<b>EPA Hazardous Waste Number K048</b>
Hexavalent chromium; lead
<b>EPA Hazardous Waste Number K049</b>
Hexavalent chromium; lead
<b>EPA Hazardous Waste Number K050</b>
Hexavalent chromium
<b>EPA Hazardous Waste Number K051</b>
Hexavalent chromium; lead
<b>EPA Hazardous Waste Number K052</b>
Lead
<b>EPA Hazardous Waste Number K060</b>
Cyanide; naphthalene; phenolic compounds; arsenic
<b>EPA Hazardous Waste Number K061</b>
Hexavalent chromium; lead; cadmium
<b>EPA Hazardous Waste Number K062</b>
Hexavalent chromium; lead
<b>EPA Hazardous Waste Number K064</b>
Lead; cadmium
<b>EPA Hazardous Waste Number K065</b>
Do
<b>EPA Hazardous Waste Number K066</b>
Do
<b>EPA Hazardous Waste Number K069</b>
Hexavalent chromium; lead; cadmium
<b>EPA Hazardous Waste Number K071</b>
Mercury
<b>EPA Hazardous Waste Number K073</b>
Chloroform; carbon tetrachloride; hexachloroethane; trichloroethane; tetrachloroethylene; dichloroethylene; 1,1,2,2-tetrachloroethane
<b>EPA Hazardous Waste Number K083</b>
Aniline; diphenylamine; nitrobenzene; phenylenediamine
<b>EPA Hazardous Waste Number K084</b>
Arsenic
<b>EPA Hazardous Waste Number K085</b>
Benzene; dichlorobenzenes; trichlorobenzenes; tetrachlorobenzenes; pentachlorobenzene; hexachlorobenzene; benzyl chloride
<b>EPA Hazardous Waste Number K086</b>
Lead; hexavalent chromium
<b>EPA Hazardous Waste Number K087</b>
Phenol; naphthalene
<b>EPA Hazardous Waste Number K088</b>
Cyanide (complexes)
<b>EPA Hazardous Waste Number K090</b>
Chromium
<b>EPA Hazardous Waste Number K091</b>
Do
<b>EPA Hazardous Waste Number K093</b>
Phthalic anhydride; maleic anhydride
<b>EPA Hazardous Waste Number K094</b>
Phthalic anhydride
<b>EPA Hazardous Waste Number K095</b>
1,1,2-trichloroethane; 1,1,1,2-tetrachloroethane; 1,1,2,2-tetrachloroethane
<b>EPA Hazardous Waste Number K096</b>
1,2-dichloroethane; 1,1,1-trichloroethane; 1,1,2-trichloroethane
<b>EPA Hazardous Waste Number K097</b>
Chlordane; heptachlor
<b>EPA Hazardous Waste Number K098</b>
Toxaphene
<b>EPA Hazardous Waste Number K099</b>
2,4-dichlorophenol; 2,4,6-trichlorophenol
<b>EPA Hazardous Waste Number K100</b>
Hexavalent chromium; lead; cadmium
<b>EPA Hazardous Waste Number K101</b>
Arsenic
<b>EPA Hazardous Waste Number K102</b>
Arsenic
<b>EPA Hazardous Waste Number K103</b>
Aniline; nitrobenzene; phenylenediamine
<b>EPA Hazardous Waste Number K104</b>
Aniline; benzene; diphenylamine; nitrobenzene; phenylenediamine

Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste
<b>EPA Hazardous Waste Number K105</b>
Benzene; monochlorobenzene; dichlorobenzenes; 2,4,6-trichlorophenol
<b>EPA Hazardous Waste Number K106</b>
Mercury
<b>EPA Hazardous Waste Number K107</b>
1,1-dimethylhydrazine (UDMH)
<b>EPA Hazardous Waste Number K108</b>
1,1-dimethylhydrazine (UDMH)
<b>EPA Hazardous Waste Number K109</b>
1,1-dimethylhydrazine (UDMH)
<b>EPA Hazardous Waste Number K110</b>
1,1-dimethylhydrazine (UDMH)
<b>EPA Hazardous Waste Number K111</b>
2,4-dinitrotoluene
<b>EPA Hazardous Waste Number K112</b>
2,4-toluenediamine; o-toluidine; p-toluidine; aniline
<b>EPA Hazardous Waste Number K113</b>
2,4-toluenediamine; o-toluidine; p-toluidine; aniline
<b>EPA Hazardous Waste Number K114</b>
2,4-toluenediamine; o-toluidine; p-toluidine
<b>EPA Hazardous Waste Number K115</b>
2,4-toluenediamine
<b>EPA Hazardous Waste Number K116</b>
Carbon tetrachloride; tetrachloroethylene; chloroform; phosgene
<b>EPA Hazardous Waste Number K117</b>
Ethylene dibromide
<b>EPA Hazardous Waste Number K118</b>
Ethylene dibromide
<b>EPA Hazardous Waste Number K123</b>
Ethylene thiourea
<b>EPA Hazardous Waste Number K124</b>
Ethylene thiourea
<b>EPA Hazardous Waste Number K125</b>
Ethylene thiourea
<b>EPA Hazardous Waste Number K126</b>
Ethylene thiourea
<b>EPA Hazardous Waste Number K131</b>
Dimethyl sulfate; methyl bromide
<b>EPA Hazardous Waste Number K132</b>
Methyl bromide
<b>EPA Hazardous Waste Number K136</b>
Ethylene dibromide
<b>EPA Hazardous Waste Number K141</b>
Benzene; benz(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; benzo(k)fluoranthene; dibenz(a,h)anthracene; indeno(1,2,3-cd)pyrene
<b>EPA Hazardous Waste Number K142</b>
Benzene; benz(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; benzo(k)fluoranthene; dibenz(a,h)anthracene; indeno(1,2,3-cd)pyrene
<b>EPA Hazardous Waste Number K143</b>
Benzene; benz(a)anthracene; benzo(b)fluoranthene; benzo(k)fluoranthene
<b>EPA Hazardous Waste Number K144</b>
Benzene; benz(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; benzo(k)fluoranthene; dibenz(a,h)anthracene
<b>EPA Hazardous Waste Number K145</b>
Benzene; benz(a)anthracene; benzo(a)pyrene; dibenz(a,h)anthracene; naphthalene
<b>EPA Hazardous Waste Number K147</b>
Benzene; benz(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; benzo(k)fluoranthene; dibenz(a,h)anthracene; indeno(1,2,3-cd)pyrene
<b>EPA Hazardous Waste Number K148</b>
Benz(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; benzo(k)fluoranthene; dibenz(a,h)anthracene; indeno(1,2,3-cd)pyrene
<b>EPA Hazardous Waste Number K149</b>
Benzotrichloride; benzyl chloride; chloroform; chloromethane; chlorobenzene; 1,4-dichlorobenzene; hexachlorobenzene; pentachlorobenzene; 1,2,4,5-tetrachlorobenzene; toluene
<b>EPA Hazardous Waste Number K150</b>
Carbon tetrachloride; chloroform; chloromethane; 1,4-dichlorobenzene; hexachlorobenzene; pentachlorobenzene; 1,2,4,5-tetrachlorobenzene; 1,1,2,2-tetrachloroethane; tetrachloroethylene; 1,2,4-trichlorobenzene



Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste
<b>EPA Hazardous Waste Number K151</b>
Benzene; carbon tetrachloride; chloroform; hexachlorobenzene; pentachlorobenzene; toluene; 1,2,4,5-tetrachlorobenzene; tetrachloroethylene
<b>EPA Hazardous Waste Number K156</b>
Benomyl; carbaryl; carbendazim; carbofuran; carbosulfan; formaldehyde; methylene chloride; triethylamine
<b>EPA Hazardous Waste Number K157</b>
Carbon tetrachloride; formaldehyde; methyl chloride; methylene chloride; pyridine; triethylamine
<b>EPA Hazardous Waste Number K158</b>
Benomyl; carbendazim; carbofuran; carbosulfan; chloroform; methylene chloride
<b>EPA Hazardous Waste Number K159</b>
Benzene; butylate; EPTC; molinate; pebulate; vernolate
<b>EPA Hazardous Waste Number K161</b>
Antimony; arsenic; metam-sodium; ziram
<b>EPA Hazardous Waste Number K169</b>
Benzene
<b>EPA Hazardous Waste Number K170</b>
Benzo(a)pyrene; dibenz(a,h)anthracene; benz(a)anthracene; benzo(b)fluoranthene; benzo(k)fluoranthene; 3-methylcholanthrene; 7,12-dimethylbenz(a)anthracene
<b>EPA Hazardous Waste Number K171</b>
Benzene; arsenic
<b>EPA Hazardous Waste Number K172</b>
Benzene; arsenic
<b>EPA Hazardous Waste Number K174</b>
1,2,3,4,6,7,8-heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD); 1,2,3,4,6,7,8-heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF); 1,2,3,4,7,8,9-heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF); HxCDDs (all hexachlorodibenzo-p-dioxins); HxCDFs (all hexachlorodibenzofurans); PeCDDs (all pentachlorodibenzo-p-dioxins); OCDD (1,2,3,4,6,7,8,9-octachlorodibenzo-p-dioxin); OCDF (1,2,3,4,6,7,8,9-octachlorodibenzofuran); PeCDFs (all pentachlorodibenzofurans); TCDDs (all tetrachlorodibenzo-p-dioxins); TCDFs (all tetrachlorodibenzofurans)
<b>EPA Hazardous Waste Number K175</b>
Mercury
<b>EPA Hazardous Waste Number K176</b>
Arsenic; lead
<b>EPA Hazardous Waste Number K177</b>
Antimony
<b>EPA Hazardous Waste Number K178</b>
Thallium

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829, 840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003), amended by the Office of Environmental Assessment, LR 31:

**Part VII. Solid Waste**  
**Subpart 1. Solid Waste Regulations**  
**Chapter 1. General Provisions and Definitions**  
**§115. Definitions**

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

\* \* \*

*Construction/Demolition Debris* Nonhazardous waste generally considered not water-soluble, including but not limited to metal, concrete, brick, asphalt, roofing materials (shingles, sheet rock, plaster), or lumber from a construction or demolition project, but excluding asbestos-contaminated waste, white goods, furniture, trash, or treated lumber. The admixture of construction and demolition debris with more than five percent by volume of paper associated with such debris or any other type of solid waste (excluding woodwaste or yard trash) will cause it to be classified as other than construction/demolition debris.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:

**Chapter 7. Solid Waste Standards**  
**Subchapter D. Minor Processing and Disposal Facilities**  
**§721. Construction and Demolition Debris and Woodwaste Landfills and Processing Facilities (Type III)**

A. - C.1.e.ii. ...  
 iii. *yard trash* as defined in LAC 33:VII.115.

C.1.f. - E.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), LR 31:

**Part IX. Water Quality**  
**Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**  
**Chapter 25. Permit Application and Special LPDES Program Requirements**

**§2505. Concentrated Animal Feeding Operations**

A. - G.6. ...

H. Duty to Maintain Permit Coverage. No later than 180 days before the expiration of a permit, the permittee must submit an application to renew its permit, in accordance with LAC 33:IX.2501.I. However, the permittee need not

continue to seek continued permit coverage or reapply for a permit if:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:467 (March 2002), LR 29:1463 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:

**Part XI. Underground Storage Tanks**

**Chapter 1. Program Applicability and Definitions**

**§103. Definitions**

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless specifically defined otherwise in LAC 33:XI.1105 or 1303.

\*\*\*

*Response Action Contractor* A person who has been approved by the department and is carrying out any response action, including a person retained or hired by such person to provide specialized services relating to a response action, and who shall provide no more than 40 percent of all response actions, based on costs, relating to a particular underground storage tank site. This 40 percent does not include those costs associated with reimbursement application preparation or laboratory analyses. When emergency conditions exist as a result of a release from a motor fuels underground storage tank, this term shall also include any person performing department-approved emergency response actions during the first 72 hours following the release.

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:520 (April 2001), amended by the Office of Environmental Assessment, LR 31:

**Chapter 11. Financial Responsibility**

**§1121. Use of the Motor Fuels Underground Storage Tank Trust Fund**

The administrative authority was authorized by R.S. 30:2194-2195.10 to receive and administer the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) to provide financial responsibility for owners or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner or operator who is eligible for participation in the MFUSTTF may use this mechanism to partially fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner or operator must be an *eligible participant* as defined in Subsection A of this Section. In addition, the owner or operator must use one of the other mechanisms described in LAC 33:XI.1111-1119 or 1123-1125 to demonstrate financial responsibility for the amounts specified in Subsection C of this Section, which are the

responsibility of the participant and not covered by the MFUSTTF.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

*Advisory Board* The Motor Fuels Underground Storage Tank Trust Fund Advisory Board (established under R.S. 30:2195.8), whose eight members consist of the following:

- a. the secretary of the Department of Environmental Quality or his designee;
- b. four members appointed by the president of the Louisiana Oil Marketers and Convenience Store Association;
- c. one member appointed by the Mid-Continent Oil and Gas Association; and
- d. two members appointed by the secretary who represent the response action contractor community.

\*\*\*

*Motor Fuels Underground Storage Tank* A UST used only to contain an accumulation of motor fuels.

\*\*\*

B. - D.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:521 (April 2001), amended by the Office of Environmental Assessment, LR 31:

**§1139. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance**

A. - C. ...

D. Within 30 days after receipt of notification that the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of Environmental Assessment, LR 31:

A public hearing will be held on May 25, 2005, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 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. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS063. Such comments must be received no later than June 1, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-

4314 or to fax (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto: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 OS063. This regulation is available on the Internet at [www.deq.louisiana.gov](http://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; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Wilbert F. Jordan, Jr.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Cleanup Package**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no expected implementation costs or savings to state or local governmental units by the proposed Rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections of state or local governmental units by the proposed Rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups by the proposed Rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated effect on competition and employment by the proposed Rule.

Karen K. Gautreaux  
Deputy Secretary  
0504#021

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Environmental Assessment**

Postponement of Permit Deadline for Oil and Gas  
Construction Activities (LAC 33:IX.2511)(WQ060ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2511 (Log #WQ060ft).

This proposed Rule is identical to federal regulations found in 70 FR 11560-11563, No. 45 (March 9, 2005), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation

Development Section at (225) 219-3550 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the proposed rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed Rule implements the Environmental Protection Agency (EPA) Rule to postpone until June 12, 2006, the requirement to obtain National Pollutant Discharge Elimination System (NPDES) storm water permit authorization for oil and gas construction activity that disturbs one to five acres of land. This second postponement promulgated by EPA for these activities is necessary in order to afford EPA additional time to complete consideration of issues raised by stakeholders about storm water runoff from these activities and of procedures for controlling storm water discharges as appropriate to mitigate impacts on water quality. Within six months, EPA intends to publish a notice of proposed rulemaking for addressing these discharges and to invite public comments.

The Department of Environmental Quality, Office of Environmental Services (successor to the former Office of Water Resources), became the NPDES permit issuing authority for the state of Louisiana on August 27, 1996. This Rule is necessary for the Louisiana Pollutant Discharge Elimination System (LPDES) program to be consistent with the EPA NPDES program. The department issued an Emergency Rule, effective March 10, 2005, to reflect the revised federal requirement until a final Rule can be promulgated. The basis and rationale for this Rule are to mirror the federal regulations.

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

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part IX. Water Quality**

**Subpart 2. The Louisiana Pollutant Discharge  
Elimination System (LPDES) Program**

**Chapter 25. Permit Application and Special LPDES  
Program Requirements**

**§2511. Storm Water Discharges**

A. - E.7.c. ...

8. Any storm water discharge associated with small construction activity identified in Subparagraph B.15.a of this Section, other than discharges associated with small construction activity at oil and gas exploration, production, process, and treatment operations or transmission facilities, requires permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by June 12, 2006.

E.9 - G.4.d. ...

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:

A public hearing will be held on May 25, 2005, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 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. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ060ft. Such comments must be received no later than May 25, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ060ft. This regulation is available on the Internet at [www.deq.louisiana.gov](http://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; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Wilbert F. Jordan, Jr.  
Assistant Secretary

0504#022

## NOTICE OF INTENT

### Office of Governor Division of Administration Board of Home Inspectors

Home Inspectors Training  
(LAC 46:XL.120)

The Board of Home Inspectors proposes to amend LAC 46:XL.120, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Home Inspector Licensing Law, R.S. 37:1471 et seq. The proposed text is being amended and adopted to provide standards for classroom training, and requirements and qualifications for education providers and trainees. The proposed Rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The proposed adopted and amended Rules are set forth below.

## Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part XL. Home Inspectors

#### Chapter 1. General Rules

#### §120. Infield Training; Classroom Training; Trainee Requirements

A. - F. ...

G.1. In order to qualify as an education provider, an applicant shall:

- a. pay the initial education provider fee;
- b. provide its course list to the board;
- c. agree, in writing, to defend, indemnify and hold the board harmless against any claim or suit alleging negligent or intentional acts or omissions of the education provider in its training, or otherwise;
- d. remain current on all renewal and other fees; and
- e. be approved by the board.

2. In order to qualify as a Certified Home Inspector Instructor of an education provider, a person must:

- a. have been actively engaged in the performance of home inspections for the three years prior to certification;
- b. have performed at least 500 home inspections; or
- c. be licensed in the field of the subject matter of the particular course instructed.

H.1. The 90 classroom hours of home inspection class work as set forth in §119.B.1, above, may only include a combination of any of the following methods of instruction:

- a. live lectures by a Certified Home Inspector Instructor;
- b. DVD, CD ROM, videotape, or other electronic means of video lecture, with a Certified Home Inspector Instructor available during classroom hours for questioning and discussion;
- c. in-classroom or remote demonstration of techniques; or
- d. periodic, in-classroom testing.

2. No credit towards the 90 classroom hours shall be given for:

- a. in-classroom study;
- b. instruction received from an education provider not duly qualified by the board;
- c. time spent listening to audiotapes; or
- d. classroom time devoted to non-approved course materials.

I. Upon registering trainees for a 90-hour course, all qualified education providers shall:

1. notify the board of the date of the commencement of each 90-hour course of instruction of each trainee;
2. provide the names, addresses, and telephone numbers of all trainees enrolled for that course;
3. keep records of attendance of each trainee enrolled in the 90-hour session to confirm satisfactory completion of the 90 required classroom hours of instruction;
4. provide the trainee with an Education Provider Evaluation Form approved by the board prior to final testing and completion of the 90 hours of instruction;
5. provide a final examination and/or multiple periodic examinations to the trainee covering course contents; and

6. provide a copy of certificates of completion to the board of only those trainees who have completed the full 90 hours of classroom instruction.

J. Before the trainee can be certified as having completed the required 90 hours of classroom instruction, the trainee must have:

1. attended the full 90 hours of classroom instruction;
2. passed the final examination and/or all periodic examinations given by the educational provider;
3. completed the 90 hours of classroom instruction within 180 days of commencement; and
4. mailed a completed LHI Application Form to the board.

K. Before registering with a qualified educational provider, the trainee must first apply with the board. After enrolling with a qualified educational provider, the trainee must:

1. provide the board with the name of the provider and the commencement date of instruction;
2. notify the board upon completion of the 90 hours of instruction;
3. return the Educational Provider Evaluation Form to the board; and
4. notify the board each time the trainee takes the national exam.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1475-1477, and R.S. 37:1480.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Home Inspectors, LR 30:1687 (August 2004), amended LR 31:

Interested parties may submit written comments to Don Lewis, Chief Operating Officer, Louisiana State Board of Home Inspectors, P.O. Box 14868 Baton Rouge, LA, 70898-4868, or by facsimile to (225) 248-1335. Comments will be accepted through the close of business May 3, 2005. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on May 27, 2005 at 10 a.m. at the Office of the State Board of Home Inspectors, 4664 Jamestown, Suite 220, Baton Rouge, LA.

Albert J. Nicaud  
Board Attorney

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Home Inspectors**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The board expects minimal costs associated with the publication of the amendments and adopted rules. Licensees and the interested public will be informed of these rule changes via the board's regular newsletter, direct mailings, website postings or other means of communication at a minimal cost.

### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units as no increase in fees will result from the amendments.

### **III. ESTIMATED COSTS AND/ OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)**

There may be costs to instructors and economic benefits to trainees. The board has unanimously decided that a minimum

qualification to become a certified home inspector instructor is licensure in the field of home inspection or the field in which a person plans to give instruction (plumbing, electrical, etc.). The cost associated with obtaining such license would be the anticipated cost only in the instance in which an instructor was no already licensed. The board is of the opinion that such minimal requirement would better train and instruct the trainee which in turn would provide a better opportunity to pass the required national home inspector examination on the first try, without paying for additional examination fees and delaying their entrance into the marketplace.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The only impact on competition and employment anticipated as a result of the proposed rule changes is the requirement that all instructors seeking certification from the board must now be licensed home inspectors.

Albert J. Nicaud  
Board Attorney  
0504#010

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

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

National Guard (LAC 32:I:1501-1515)

Editor's Note: This Notice of Intent is being repromulgated to correct a submission error. The original Notice of Intent may be viewed in the March 20, 2005 edition of the *Louisiana Register* on pages 800-802.

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) 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, and pursuant to the provisions of R.S. 42:808, as amended Acts 2004, No. 870, §1, OGB hereby gives notice of its intent to adopt the following Rule providing with respect to participation in OGB sponsored life, health, or other programs by active or retired member of the Louisiana National Guard.

### **Title 32**

### **EMPLOYEE BENEFITS**

### **Part I. General Provisions**

### **Chapter 15. Participation by Active or Retired Members of the Louisiana National Guard**

### **§1501. Eligibility**

A. Any active or retired member of the Louisiana National Guard shall be eligible to participate in OGB sponsored life, health, or other programs provided that:

1. other coverage is not available through the member's employment; and
2. the member is not eligible for Medicare coverage.

B. Eligible dependents of such active or retired members of the Louisiana National Guard shall be eligible for dependent coverage in accordance with the terms, conditions, requirements and limitations applicable to

dependents of other eligible employees and retirees as set forth in the rules of OGB.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(2), and 42:808.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 31:

### **§1503. Certification**

A. Any eligible active or retired member of the Louisiana National Guard who submits an enrollment application to participate in OGB sponsored life, health, or other programs shall provide, contemporaneous with the enrollment application, written certification as follows:

1. from the member's employer, that other coverage is not available through the member's employment; and
2. from the appropriate federal administrative agency that the member is not eligible for Medicare;
3. OGB may require additional written certification at such times as it deems necessary to verify eligibility for participation in its sponsored programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(2), and 42:808.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 31:

### **§1505. Payment of Premiums**

A. The member must agree to pay the full amount of all premiums due for selected coverage without contribution from the state of Louisiana or any of the governmental or administrative subdivisions, departments, or agencies of the executive, legislative, or judicial branches of the state of Louisiana, or the governing boards and authorities of the state universities, colleges, and public elementary and secondary school systems in the state.

B. Contemporaneous with the enrollment application, the member must complete and submit to OGB all documentation necessary to provide for the payment of premiums via electronic funds transfer (EFT) from a licensed financial institution doing business in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(2), and 42:808.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 31:

### **§1507. Effective Dates of Health Coverage**

A. Unless an earlier effective date is mandated by applicable law or regulation, the effective date of health coverage for active or retired members of the Louisiana National Guard and their eligible dependents shall be:

1. the first day of the month following the date of receipt by OGB of the properly completed enrollment application, together with all required documentation, when such application and documentation are received by OGB prior to the fifteenth of the month;
2. the first day of the second month following the date of the receipt by OGB of the properly completed enrollment application and all required documentation when such application and documentation are received by OGB on or after the fifteenth of the month.

B. Coverage for eligible dependents of such active or retired members of the Louisiana National Guard shall become effective in accordance with the terms, conditions, requirements and limitations applicable to dependents of

other eligible employees and retirees as set forth in the rules of OGB.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(2), and 42:808.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 31:

### **§1509. Health Benefits Pre-Existing Condition Limitation**

A. Upon initial enrollment, health coverage for all active or retired members of the Louisiana National Guard and their dependents shall be subject to a pre-existing condition limitation as follows.

1. Medical expenses incurred during the first 12 months following the date of enrollment of the member and/or dependent will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately prior to the date of enrollment. This limitation does not apply to pregnancy.

2. If the member or dependent previously had other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated pursuant thereto (HIPAA), credit against the 12-month limitation period will be given for the duration of such prior coverage that occurred without a break of 63 days or more. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against the 12-month limitation period.

B. OGB may require applicants to complete a "Statement of Physical Condition" form and an "Acknowledgment of Pre-existing Condition" form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(2), and 42:808.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 31:

### **§1511. Term Life Insurance**

A. Evidence of Insurability. Any active or retired member of the Louisiana National Guard or dependent(s) of such member for whom application for life insurance is made shall, in addition to all other required documentation, provide evidence of insurability acceptable to the insurer providing the OGB sponsored term life insurance. Such evidence of insurability shall be provided at no cost to OGB and/or the insurer providing the OGB sponsored term life insurance.

B. Effective Date

1. Unless delayed as set forth below, the effective date of life insurance will be the first of the month next following OGB's receipt of approval of the application for coverage from the insurer providing the OGB sponsored term life insurance.

2. Delay of Effective Date. If an active or retired member of the Louisiana National Guard, or dependent(s) of such member, is/are confined for medical care or treatment at home or elsewhere on the date that life insurance coverage would otherwise be effective, coverage for such individual(s) will take effect upon final medical release from such confinement.

C. Amount of Life Insurance

1. Option 1 Basic Life Insurance:

a. active or retired member of the Louisiana National Guard ~~C~~\$5,000;

b. dependent(s) of active or retired member of the Louisiana National Guard:

i. spouse ~~C~~\$2,000 and \$1,000 per eligible child; or

ii. spouse ~~C~~\$1,000 and \$500 per eligible child.

2. Option 2 ~~C~~Basic Life Insurance plus Supplemental Life Insurance:

a. active or retired member of the Louisiana National Guard ~~C~~\$20,000;

b. dependent(s) of active or retired member of the Louisiana National Guard:

i. spouse ~~C~~\$4,000 and \$2,000 per eligible child; or

ii. spouse ~~C~~\$2,000 and \$1,000 per eligible child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(2), and 42:808.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 31:

### **§1513. Termination of Coverage**

A. All benefits will terminate on the earliest of the following dates:

1. on the last day of the month in which the active or retired member of the Louisiana National Guard ceases to be eligible to participate in OGB sponsored life, health, or other programs, as provided herein;

2. on the due date of any unpaid premium/contribution required for continuation of coverage; or

3. on the date that coverage would otherwise terminate for any other employee or retiree, or dependent(s) of such employee or retiree, participating in OGB sponsored health, life, or other programs in accordance with OGB rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(2), and 42:808.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 31:

### **§1515. Other Issues**

A. Other issues pertaining to eligibility for or participation in OGB sponsored life, health, or other programs by any active or retired member of the Louisiana National Guard not specifically addressed herein shall be resolved in accordance with OGB rules pertaining to other eligible employees and retirees. Nothing herein shall be construed to confer upon any active or retired member of the Louisiana National Guard greater rights relative to eligibility for or participation in OGB sponsored life, health, or other programs than those applicable to other eligible employees and retirees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(2), and 42:808.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 31:

### **Family Impact Statement**

The proposed Rule will permit active or retired members of the Louisiana National Guard who are not eligible for employer sponsored coverage or Medicare to participate in OGB sponsored life, health, or other programs upon agreement to pay the full amount of all premiums due for

selected coverage. The proposed Rule has no other known impact on family formation, stability, or autonomy.

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on May 23, 2005.

A. Kip Wall  
Chief Executive Officer

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: National Guard**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is estimated by OGB's consulting actuary, Milliman, USA, that this change mandated by Act 870 of the 2004 Louisiana Legislature would cost the Office of Group Benefits approximately \$0 to \$1,252,183 in FY 04/05, \$0 to \$3,456,026 in FY 05/06, and \$0 to \$3,974,430 in FY 06/07. This change in eligibility provides coverage for any Active or Retired Louisiana National Guard member who certifies that other coverage is not available through the member's employment or the member is not eligible for Medicare. It is anticipated \$3,000 in expenses will be incurred with the publishing of this Rule in FY 04/05.

### **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 as the entire premium (100 percent) for these Louisiana National Guard Members would be paid by such member.

### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This Rule will allow any active member (approximately 11,700) or retired member (approximately 4,000) of the Louisiana National Guard to obtain health insurance through the Office of Group Benefits if the member certifies that other coverage is not available through the member's employment or the member is not eligible for Medicare. This is a result of Act 870 of the 2004 Louisiana Legislature which became effective July 1, 2004. As of February 1, 2005 there were no enrollees in the program as a result of this legislation.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Competition and employment will not be affected.

A. Kip Wall  
Chief Executive Officer  
0504#064

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

## **NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Office of State Lands**

Receipt of Donation of Immovable Property  
(LAC 43:XXVII.3201-3204)

The commissioner of administration promulgates these rules and regulations for Receipt of Donation of Immovable Property (Rules) pursuant to Act 262 of the 2003 Regular Session of the Legislature and in accordance with the

Administrative Procedure Act, in order to implement the provisions of Act 262 of 2003, by providing rules and regulations necessary to permit the receipt by the state of Louisiana of donations of immovable property consistent with the provisions of R.S. 41:151. These Rules shall be promulgated as LAC 43:XXVII.3201-3204 as a new Chapter 32 in that Title and Part.

#### **Title 43**

### **NATURAL RESOURCES**

#### **Part XXVII. State Lands**

#### **Subpart 2. Use of Management of State Lands**

### **Chapter 32. Receipt of Donation of Immovable Property**

#### **§3201. Submission of Offers of Donation**

A. Prior to acceptance by a state agency of any offer of donation of immovable property, that offer shall be submitted in writing to the commissioner of administration or his designee for evaluation in accordance with Section 3202 of these rules and shall be reviewed and approved in full accordance with Section 3203 of these rules. For the purposes of these rules, "state agency" shall mean any agency that meets the definition set forth in R.S. 39:2(2). However, notwithstanding anything contained in these rules, these rules shall not apply to any offer of donation of immovable property made to a state agency that is exempt by law from the operation of R.S. 41:151.

B. The written submission of an offer of donation to the commissioner of administration or his designee shall set forth:

1. the identification of the state agency that is the proposed donee;
2. the identification of the proposed donor;
3. the legal description of the property that is the subject of the proposed donation, including a statement of the total acreage of the property and a survey map, if available;
4. any proposed terms, conditions and/or reservations to which the proposed donation would be subject;
5. a statement of the public interest that acceptance of the donation would serve;
6. a statement of any financial or other burdens that acceptance of the donation would impose on the state; and
7. a statement of the appraised fair market value of the property that is the subject of the proposed donation.

C. In addition to the information described in Subsection 3201.B of these rules, a state agency submitting a proposed donation shall provide the commissioner of administration or his designee with any supplementary information that he requests.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 41:151.G.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Lands, LR 31:

#### **§3202. Evaluation of Offers of Donation**

A. The commissioner of administration or his designee shall evaluate proposed donations of immovable property submitted pursuant to these rules and shall determine whether such proposed donations are in the best interest of the state.

B. In conducting an evaluation pursuant to these rules, the commissioner of administration or his designee shall weigh the extent to which acceptance of a proposed donation

would serve the public interest and the burden, if any, that acceptance of that donation would impose on the state.

C. Based upon his evaluation conducted pursuant to these rules, the commissioner of administration or his designee shall determine whether acceptance or refusal of a proposed donation is in the best interest of the state, and shall provide the proposed donee his determination in writing. Such written notification may set forth terms and conditions relating to his determination.

D. If the commissioner of administration or his designee determines that acceptance of a proposed donation is in the best interest of the state, he shall proceed to assist the donee in negotiating any appropriate terms and conditions of the proposed donation, in order to serve the public interests in such proposed donation. A proposed donation shall not be accepted unless the commissioner of administration or his designee has approved all such terms and conditions.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 41:151.G.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Lands, LR 31:

#### **§3203. Approval of Offers of Donation**

A. When the commissioner of administration or his designee determines that a proposed donation, including any terms and conditions of such donation negotiated pursuant to Subsection 3202.D of these rules, is in the best interest of the state, he or she shall prepare a written report, which shall set forth:

1. the identification of the state agency that is the proposed donee;
2. the identification of the proposed donor;
3. the legal description of the property that is the subject of the proposed donation, including a statement of the total acreage of the property and a survey map, if available;
4. any proposed terms, conditions and/or reservations to which the proposed donation would be subject;
5. a description of the evaluation conducted pursuant to §3202 of these rules, showing how the proposed donation would be in the best interest of the state; and
6. a statement of the appraised fair market value of the property that is the subject of the proposed donation.

B. The commissioner of administration or his designee shall submit the report identified in Subsection 3203.A of these rules to the House Committee on Natural Resources and the Senate Committee on Natural Resources at each committee's office in the state capitol by means of certified mail, return receipt requested, or by means of a messenger, who shall obtain a signature for receipt as proof of receipt of the report by each committee.

C. The committees shall, within 30 days of their receipt of the report submitted to them pursuant to Subsection 3203.B of these rules, meet jointly or separately to conduct hearings regarding the proposed donation that is the subject of the report. If the committees meet jointly, then a quorum of each committee shall be required to take action and a motion shall receive the favorable vote of a majority of those present in order to be adopted.

D. At the hearing or hearings identified in Subsection 3203.C of these rules, the committees shall evaluate the terms and conditions of the proposed donation and



determine whether they are acceptable and whether acceptance of the proposed donation is in the best interest of the state.

E. If either committee determines that acceptance of a proposed donation is not in the best interest of the state, that committee may disapprove the proposed donation and shall give written notification of the disapproval to the commissioner of administration or his designee, summarizing its determinations. In such a case, either committee may recommend changes to the terms and conditions of the proposed donation, which recommendations shall not be binding on the proposed donor or on the commissioner of administration or his designee.

F. If a proposed donation is disapproved pursuant to Subsection 3203.E of these rules, the commissioner of administration or his designee may assist the proposed donee in renegotiating the terms and conditions of the proposed donation in light of the determinations and recommendations, if any, made by the committees. If such a renegotiation occurs, the commissioner of administration or his designee may submit to the committees an additional report, consistent with the requirements of Subsection 3203.A, describing the renegotiated proposal.

G. If both committees approve a proposed donation or if neither committee disapproves such proposed donation within 60 days of receipt of the report identified in Subsection 3203.A of these rules, then the commissioner of administration may accept the proposed donation on behalf of the state or authorize acceptance of the donation by the proposed donee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:151.G.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Lands, LR 31:

#### **§3204. Notifications to the Legislature**

A. The commissioner of administration or his designee shall, on a quarterly basis, submit to the House Committee on Natural Resources and the Senate Committee on Natural Resources a report identifying any proposed donations that the commissioner of administration or his designee refused during the previous quarterly period. The quarterly report shall set forth the reasons for such refusal.

B. Notwithstanding the provisions of Subsection 3204.A of these rules, where a proposed donor has requested in writing that a proposed donation remain confidential if not accepted, the commissioner of administration or his designee shall not identify such proposed donation in his quarterly report.

C. The commissioner of administration or his designee shall, on annual basis, submit to the House Committee on Natural Resources and the Senate Committee on Natural Resources a report setting forth the amount of immovable property received by the state through donation, the estimated value of such property and the state agencies that received such property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:151.G.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Lands, LR 31:

#### **Family Impact Statement**

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earnings and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to J. Michael Lamers, Office of General Counsel, Division of Administration, P.O. Box 94095, Baton Rouge, LA. 70804-9095. Written comments will be accepted through May 10, 2005.

Charles St. Romain  
Director

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Receipt of Donation of Immovable Property**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The state will not incur any appreciable implementation costs in connection with the proposed Rules. Adoption of the Rules will likely create savings for the state and will otherwise serve the public interest, by minimizing the potential that immovable property that state agencies accept by means of donations will subject the state to undue obligations, such as maintenance expenses, costs of environmental remediation, title encumbrances and other such obligations. However, it is not possible to predict the amount of savings created, since that amount will depend on the number and value of donations of immovable property offered to state agencies.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Adoption of this Rule will not create new revenue collections to the state.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Adoption of this Rule will have no appreciable impact on persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Adoption of this Rule will have no appreciable impact on competition and employment.

Charles St. Romain  
Director  
0504#039

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Racing Commission**

**Corrupt and Prohibited Practices Human Recombinant Erythropoietin and/or Darbepoietin (LAC 35:I.1716)**

The Louisiana State Racing Commission hereby gives notice that it intends to adopt LAC 35:I.1716, "Human Recombinant Erythropoietin and/or Darbepoietin." The commission finds this action necessary to prohibit the use and presence of human recombinant erythropoietin and/or darbepoietin in race horses. This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 35**

**HORSE RACING**

**Part I. General Provisions**

**Chapter 17. Corrupt and Prohibited Practices**

**§1716. Human Recombinant Erythropoietin and/or Darbepoietin**

A. The possession and/or use of human recombinant erythropoietin and/or darbepoietin is strictly prohibited, and shall be classified as an RCI Category I substance. Every horse eligible to race in Louisiana is subject to random testing for these and other substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 31:

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, Executive Director, or C.A. Rieger, Assistant Director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule through Friday, May 11, 2005, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Corrupt and Prohibited Practices Human Recombinant Erythropoietin and/or Darbepoietin**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no anticipated costs or savings to state or local governmental units associated with this Rule, other than one-time costs directly associated with its publication.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of local and state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action benefits horsemen by ensuring an equal playing field of racing between race horses by prohibiting the administration of, or presence of, the substances erythropoietin and darbepoietin in race horses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Charles A. Gardiner III  
Executive Director  
0504#049

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Racing Commission**

**Purses from Video Poker (LAC 35:III.5736)**

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:III.5736, "Purses from Video Poker" to prevent a discrepancy between it (Paragraph A.1) and R.S. 27:323 of the dollar amount stated therein. This proposed Rule change has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 35**

**HORSE RACING**

**Part III. Personnel, Registration and Licensing**

**Chapter 57. Associations' Duties and Obligations**

**§5736. Purses from Video Poker**

A. ...

1. Two-thirds of the total funds to all thoroughbred racing associations, proportionately distributed to each association based on the number of prior calendar year thoroughbred race days per track to the total number of prior calendar year thoroughbred race days. Such funds shall be used solely to supplement purses in accordance with a schedule or formula established by the purse committee of the Louisiana Thoroughbred Breeders Association, and only on Louisiana-bred thoroughbred races with purses not exceeding \$20,000.

A.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148, R.S. 27:323 and R.S. 33:4862.23.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 31:

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, Executive Director, or C.A. Rieger, Assistant Director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule through Friday, May 11, 2005, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Purses from Video Poker**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no anticipated costs or savings to state or local governmental units associated with this rule, other than one-time costs directly associated with its publication. This action merely changes the rule to correspond to the existing statutory provision, which the Commission has been following.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of local and state 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 associated with this rule change.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated effect on competition and employment.

Charles A. Gardiner III  
Executive Director  
0504#065

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Racing Commission**

**Vesting of Title; Tests (LAC 35:XI.9913)**

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:XI.9913 "Vesting of Title; Tests." The commission finds this action necessary to provide for consequences of positive tests for equine infectious anemia and/or the presence of erythropoietin and/or darbepoietin antibodies in races horses being claimed. The proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 35  
HORSE RACING**

**Part XI. Claiming Rules and Engagements**

**Chapter 99. Claiming Rule**

**§9913. Vesting of Title; Tests**

A. Title to a claimed horse shall be vested in the successful claimant at the time the horse becomes a starter. The successful claimant shall then become the owner of the horse whether alive or dead, sound or unsound, or injured at any time after leaving the starting gate, during the race or after.

B. The successful claimant may request on the claim blank at the time he makes his claim that the horse be tested for the presence of equine infectious anemia via a Coggins test and/or erythropoietin and/or darbepoietin antibodies.

1. Should the test for equine infectious anemia prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana.

2. Should the test for recombinant erythropoietin and/or darbepoietin antibodies prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana until such time as the horse tests negative.

C. Additionally, if such erythropoietin and/or darbepoietin antibody positive result is found, the claimant, claimant's trainer or claimant's authorized agent shall have 48 hours in which to request the claim be declared invalid, such request to be made in writing to the stewards.

D. The expense of the tests and the maintenance of the horse during the period requested for the tests shall be absorbed by the successful claimant.

E. If such tests are requested the claimed horse will be sent to the retention barn of the Louisiana State Racing Commission where the state veterinarian will draw blood samples.

1. Blood samples drawn to test for equine infectious anemia shall be sent to a laboratory approved by the Louisiana Livestock Sanitary Board for the conduct of such test.

2. Blood samples drawn to detect by immunoassay the antibody to recombinant erythropoietin and/or darbepoietin shall be sent to the Louisiana State Racing Commission's state chemist.

F. Notwithstanding any inconsistent provision of this Part, a horse shall not be subject to disqualification from the race and from any share of the purse in the race, and the trainer of the horse shall not be subject to application of trainer's responsibility based upon the finding by the laboratory that the antibody of erythropoietin and/or darbepoietin was present in the sample taken from that horse.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

**HISTORICAL NOTE:** Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:446 (December 1976), amended LR 3:42 (January 1977), LR 4:285 (August 1978), LR 5:136 (June 1979), amended by the Office of the Governor, Division of Administration, Racing Commission LR 30:1476 (July 2004), LR 31:

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, Executive Director, or C.A. Rieger, Assistant Director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule through Friday, May 11, 2005, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Vesting of Title; Test**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no anticipated costs or savings to state or local governmental units associated with this Rule, other than one-time costs directly associated with its publication.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of local and state governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This action benefits horsemen by ensuring fair claiming practices, particularly in instances where erythropoietin and/or darbepoietin may have been administered to the horse being claimed, and providing for the potential new owner to request such testing. The cost of such testing will be borne by the claimant at \$50 per test.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated effect on competition and employment.

Charles A. Gardiner III  
Executive Director  
0504#050

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Occupational Therapy Continuing Professional Education  
(LAC 46:XLV.1967, 1969 and 1971)**

Notice is hereby given in accordance with R.S. 49:953, that the Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by the Louisiana Medical Practice Act, R.S. 37:1261-1292, the Louisiana Occupational Therapy Practice Act, R.S. 37:3001-3014, and the applicable provisions of the Louisiana Administrative Procedure Act, R.S. 49:951, et seq., intends to amend its administrative Rules governing continuing professional education for occupational therapists and occupational therapy assistants, LAC 46:XLV, Subpart 2, Chapter 19, Subchapter H, §§1967, 1969 and 1971. The proposed amendments do not seek to alter or modify the existing hourly continuing education requirement; rather, such are intended to provide greater clarity and direction to occupational therapists and occupational therapy assistants as to the nature and type of continuing education activities, programs and sponsors that satisfy the continuing professional education requirement prescribed by law and the board's Rules.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Professions**

**Subpart 2. Licensure and Certification**

**Chapter 19. Occupational Therapists and**

**Occupational Therapy Assistants**

**Subchapter H. Continuing Professional Education**

**§1967. Qualifying Continuing Professional Education Programs**

A. To be acceptable as qualified continuing professional education under these rules a program shall:

1. have significant and substantial theoretical and/or practical content directly related to the practice of occupational therapy, or the development, administration, and supervision of clinical practice;

2. - 5. ...

B. Self-study or independent study, to be acceptable as qualified continuing professional education under these rules, shall be sponsored or offered by the AOTA, by an AOTA approved provider, or the LOTA.

C. A licensee may earn hour for hour continuing education units (up to a maximum of 5 hours per year) for initial presentations, workshops and institutes presented by the licensee when documented by an official program, schedule or syllabus containing title, date, hours and type of audience.

D. A licensee may earn continuing education units (up to a maximum of 5 hours per year) for publications appearing in a peer-reviewed professional journal, a book on theory/practice of occupational therapy, or chapter(s) in a book. Documentation shall consist of the full reference of the publication including, title, author, editor and date of publication or, if not yet published, a copy of a letter of acceptance for publication.

E. None of the following programs, seminars, or activities shall be deemed to qualify as acceptable continuing professional education programs under these rules:

1. any program, seminar or activity not meeting the standards prescribed by §1967.A.-D;

2. any program, presentation, seminar, or course of instruction not providing the participant an opportunity to ask questions or seek clarification of specific matters presented;

3. mentoring, training, or supervisory activities;

4. holding office in professional or governmental organizations, agencies, or committees;

5. participation in case conferences or informal presentations;

6. writing articles for publications that are not peer-reviewed, writing grant applications, or developing or participating in research projects; or

7. reading books or journals, viewing videos, or similar activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1004 (September 1994), amended LR 31:

**§1969. Approval of Program Sponsors**

A. Any program, course, seminar, workshop, self-study, independent study or other activity meeting the standards prescribed by §1967.A.-D sponsored or offered by the AOTA, by an AOTA approved provider, or the LOTA shall be presumptively deemed approved by the board for purposes of qualifying as an approved continuing professional education program under these rules.

B. Upon the recommendation of the advisory committee, the board may designate additional organizations and entities whose programs, courses, seminars, workshops, or other activities shall be deemed approved by the board for purposes of qualifying as an approved continuing professional education program under §1967.A.-D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1005 (September 1994), amended LR 31:

**§1971. Approval of Programs**

A. A continuing professional education program sponsored by an organization or entity not deemed approved by the board pursuant to §1969.A.-D may be preapproved by the board as a program qualifying and acceptable for satisfying continuing professional education requirements under this Subchapter upon written request to the board therefore, upon a form supplied by the board, providing a complete description of the nature, location, date, content, and purpose of such program and such other information as the board or the advisory committee may request to establish the compliance of such program with the standards prescribed by §1967.A.-D. Any such request for preapproval respecting a program which makes and collects a charge for attendance shall be accompanied by a nonrefundable processing fee of \$30.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1005 (September 1994), amended LR 31:

**Family Impact Statement**

The proposed Rule amendments have no known impact on family formation, stability or autonomy as described in R.S. 49:972.

Interested persons may submit written data, views, arguments, information or comments on the proposed Rule amendments until 4 p.m., May 16, 2005, to John B. Bobear, M.D., Executive Director, Louisiana State Board of Medical Examiners, at P.O. Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans, LA, 70130).

John B. Bobear, M.D.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Occupational Therapy Continuing  
Professional Education**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Other than the rule publication costs, which are estimated to be \$272 in FY 05, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Medical Examiners or any state or local governmental unit.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is not anticipated that the proposed rule amendments will have any material effect on the revenue collections of the Board of Medical Examiners or of any state or local governmental unit.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

Occupational therapists and occupational therapy assistants are currently required to obtain not less than 15 contact hours (1.5 continuing education units) of continuing professional education each year. The proposed amendments do not attempt to alter or modify the existing hourly continuing education requirement; rather, they seek to clarify the type and nature of continuing education activities, programs and sponsors that satisfy the requirement. It is not anticipated that the proposed rule amendments will result in any costs and/or economic benefits to directly affected persons, including applicants for licensure, licensed occupational therapists or occupational therapy assistants, or governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The proposed rule amendments are not anticipated to have any material impact on competition and employment in either the public or private sector.

John B. Bobear, M.D.  
Executive Director  
0504#045

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Disciplinary Proceedings; Alternative to Disciplinary  
Proceedings (LAC 46:XLVII.3403-3411, 3419)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S.49:950 et seq., that the Board of Nursing (Board) pursuant to the authority vested in the board by R.S. 37:918, R.S. 37:921, R.S. 37:922, R.S. 37:923 and R.S. 37:925 intends to adopt rules amending the Professional and Occupational Standards pertaining to Disciplinary Proceedings; Alternative to Disciplinary Proceedings. The proposed amendments of the Rule are set forth below.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 34. Disciplinary Proceedings; Alternative to Disciplinary Proceedings**

**§3403. Proceedings against a Registered Nurse, Advanced Practice Registered Nurse, Registered Nurse Applicant, APRN Applicant or a Student Nurse.**

A. - B. ...

C. A complaint that an individual has engaged in, or is engaging in, any conduct proscribed by R.S. 37:921, may be made by any person or the board. Such complaints shall be in writing.

D. - D.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, R.S. 37:921, R.S. 37:922 and R.S. 37:923.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:74 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), LR 26:1614 (August 2000), LR 31:

**§3405. Definition of Terms**

A. ...

\*\*\*

*Other Causes* includes, but is not limited to:

\*\*\*

k. failure to act, or negligently or willfully committing any act that adversely affects the physical or psychosocial welfare of the patient, including but not limited to, failing to practice in accordance with the Federal Centers for Disease Control recommendations for preventing transmission of human immunodeficiency virus (HIV), hepatitis B virus (HBV), and hepatitis C virus (HCV);

\*\*\*

s. failure to cooperate with the board by:

- i. not furnishing in writing a full and complete explanation covering a matter requested by the board; or
- ii. not responding to subpoenas issued by the board in connection with any investigation or hearing;
- iii. not completing evaluations required by the board;

\*\*\*

v. attempted to or obtained a license (including renewals), permit or permission to practice as a registered nurse, nurse applicant, or student nurse by fraud, perjury, deceit or misrepresentation;

w. false statement on application;

x. failure to comply with an agreement with the board.

\*\*\*

*Sexual Misconduct* is an extreme boundary violation which involves the use of power, influence and/or knowledge inherent in one's profession in order to obtain sexual gratification, romantic partners and/or sexual deviant outlets. Any behavior toward a patient by a nurse that is seductive, sexually demeaning, harassing or sexually inappropriate is a violation of the nurse's fiduciary responsibility to the patient.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), R.S. 37:921, and R.S. 37:1744-1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:74 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1145 (September 1993), LR 21:271 (March 1995), LR 24:1293 (July 1998), LR 31:

**§3407. Disciplinary Process and Procedures**

A. - B.1.a. ...

b. The information is investigated by the board's employees to determine if there is sufficient evidence to warrant disciplinary proceedings. Information received by the board shall not be considered a complaint until the individual furnishing that information submits the information in writing to the board. The executive director or designee may issue a subpoena prior to the filing of charges if, in the opinion of the executive director, such a subpoena is necessary to investigate any potential violation or lack of compliance with R.S. 37:911 et seq., or the rules, regulations, or orders of the board. The subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers, or other objects.

B.2. - C.1.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, R.S. 37:921, R.S. 37:922 and R.S. 37:923.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:75 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), LR 31:

**§3409. Formal Disciplinary Action**

A. - C.3. ...

D. Consent Order. An order involving some type of disciplinary action may be made by the board with the consent of the individual.

1. The executive director, compliance director or legal counsel is authorized to offer the individual the choice of a consent order in lieu of an administrative hearing.

D.2. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, R.S. 37:921, R.S. 37:922 and R.S. 37:923.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 21:269 (March 1995), amended LR 24:1293 (July 1998), LR 31:

**§3411. Formal Hearing**

A. - I.2.b. ...

J. Adjudged Incompetence

1. If the board is notified that a licensee has been judged incompetent to handle his/her own affairs, that licensee shall be notified that his/her Louisiana license is automatically suspended.

2. The licensee may have his/her license reinstated provided that:

a. he/she provides evidence that the reason for the suspension no longer exists;

b. he/she meets requirements for reinstatement of license as described in this Chapter.

K. Costs of Disciplinary Proceedings

1. In addition to disciplinary fines, costs will be assessed to individuals for the following activities:

a. consent order;

b. settlement order;

c. administrative hearings;

d. monitoring fine for probated licenses.

2. All fines shall be paid within 30 days of the order, unless other arrangements have been ordered or stipulated in the order, consent order or settlement order. Failure to pay the costs and fines within the stated time shall result in automatic suspension of the license, or denial of reinstatement of licensure, or denial of licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, R.S. 37:921, R.S. 37:922 and R.S. 37:923.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:75 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), LR 3:1

### **§3419. Alternative to Disciplinary Proceedings**

A. - E.6.d. ...

F. Admission and Progression. The following procedures shall apply to RNP participants.

1. For nurses who have met criteria in §3419.D and have entered the program confidentially with no disciplinary action will upon entry:

- a. sign RNP agreement for three years;
- b. refrain from the practice of nursing until approved by RNP;
- c. complete a 5-7 day inpatient evaluation and treatment as recommended at a board recognized treatment facility. Admission shall be within 10 days unless approved by RNP or board's professional staff;
- d. submit "Fit for Duty Release" by a board approved addictionologist prior to returning to work;
- e. be granted confidentiality and no disciplinary action will be taken against the license.

2. At first relapse/non-compliance for nurses in the program confidentially, the following steps will be taken.

- a. Refrain from the practice of nursing until approved by RNP.
- b. Complete a 5-7 day inpatient relapse evaluation at a board recognized treatment facility and follow treatment recommendations. Admission shall be within 10 days unless prior approval by RNP or board's professional staff.
- c. Sign RNP agreement for four years.
  - i. Complete 5-7 day inpatient relapse evaluation at a board approved treatment facility and treatment as recommended.

ii. Provide a "Fit for Duty" release from an addictionologist, approved by the board, at the time reinstatement is requested.

iii. Submit fine/costs as imposed.

3. Second Relapse/Non-Compliance

a. Be referred to board's professional staff for disciplinary action against license including automatic indefinite suspension with minimum of six months.

b. Be required to take the following steps prior to reinstatement of license:

- i. documented evidence of continuous sobriety for a minimum of six months;
- ii. re-evaluation by an addictionologist;
- iii. provide a "Fit for Duty" release from an addictionologist, approved by the board, at the time reinstatement is requested;

iv. board hearing or consent order prior to reinstatement;

v. submit fine/costs as imposed.

4. Third Relapse/Non-Compliance. Automatic suspension for a minimum of two years and show cause order for revocation.

G. Nurses Leaving the State

1. A participant who moves from Louisiana to another state with an alternative program shall have records transferred to that program.

2. A participant nurse or student nurse who moves to a state where there is no alternative program shall have the nurse's records transferred to the board in the receiving state.

H. - H.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), amended LR 27:727 (May 2001), LR 31:

### **Family Impact Statement**

The Louisiana State Board of Nursing hereby issues this Family Impact Statement: The proposed Rule related to the board's appointing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S.49:972.

Interested persons may submit written comments on the proposed Rule to Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 N. Causeway Blvd., Suite 601, Metairie, LA 70002. The deadline for receipt of all written comments is 4:30 p.m. on May 10, 2005.

Barbara L. Morvant  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Disciplinary Proceedings; Alternative to Disciplinary Proceedings**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that no additional staff or operating expenses will be needed to implement these changes. The only cost for implementation is for the publication of the rule change in the Louisiana Register estimated to be approximately \$300 in fiscal year 2005/2006.

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. The proposed rule adds reporting requirements for Hepatitis C to the LSBN by registered nurses (RNs), registered nurse applicants, and nursing students enrolled in a clinical nursing course. The proposed rule also adds other causes for disciplinary action, provides for the suspension of the license of an RN that has been judged incompetent, and provides guidelines for admission and progression for the Recovering Nurse Program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There is no anticipated effect on competition and employment.

Barbara L. Morvant, MN, RN  
Executive Director  
0504#019

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Program Closure and Reapplication  
(LAC 46:XLVII.701, 1503)**

The Board of Practical Nurse Examiners proposes to amend LAC 46:XLVII.101 et seq., in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979.

The proposed Rule change provides that the board determine, on a case-by-case basis, whether to allow currently enrolled students to complete a practical nursing program closed for cause; provides that any program closed by the board for cause must wait three years before re-application; and provides that any person affiliated with a program closed by the board for cause may only apply for a program after an affirmative showing that it is in the best interest of the public health, safety and welfare.

Student nurses provide direct patient care, under the supervision of their instructors. In certain cases, program deficiencies may be so egregious that it would not be safe to allow the students to continue in the program. In addition, the statute regulating practical nursing requires that the board appraise a program of deficiencies and allow time for corrective action to be implemented prior to initiating administrative proceedings to close a program. If the program is unable to make the necessary corrections, then, after a hearing before the board, with charges detailed, the program may be closed. Programs not able to satisfactorily address their deficiencies prior to the board voting for closure, need sufficient time to evaluate problem areas and ensure that these deficiencies do not reoccur. Furthermore, in an attempt to prevent circumvention of the new Rule, a section has been added which provides that a new program request by any person(s) affiliated with a program closed (within the last three years) for cause must affirmatively show that their new program is in the best interest of the public health, safety and welfare.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**PART XLVII. Nurses**

**Subpart 1. Practical Nurses**

**Chapter 7. Program Establishment**

**§701. Initial Request**

A. - A.6. ...

B. Any institution or program closed by the board, under §1503 of these rules and regulations, must comply with the provisions of that Section and may apply only after three years from the date of closure.

C. An institution with any affiliation with any principal, agent and/or personnel, including faculty, who has been associated with any practical nursing program closed within three years, may only apply after an affirmative showing that such application is in the best interest of the public health, safety and welfare.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:969 and R.S. 37:976.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:194 (April 1977), amended LR 10:337 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 31:

**Chapter 15. Discontinuation of a Program  
§1503. Involuntary**

A. ...

B. If the board's findings warrant withdrawal of accreditation/approval or closure, only those students presently enrolled may be permitted to complete the program and apply for licensure; the program shall, nonetheless, comply fully with the provisions of §1501, regarding arrangements for the transfer of students and/or records and transfer, protection and accessibility of all records.

C. Institutions may reapply for a program in practical nursing only after three years from the date of closure and after minimum requirements have been incorporated. Reapplication may be accomplished by proceeding as required for program establishment.

D. An institution with any affiliation with any principal, agent and/or personnel, including faculty, who has been associated with any practical nursing program closed within three years may only apply after an affirmative showing that such application is in the best interest of the public health, safety and welfare.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:969 and 37:976.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:199 (April 1977), amended LR 10:341 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1129 (October 1992), repromulgated LR 18:1262 (November 1992), amended LR 31:

**Family Impact Statement**

The proposed amendments to LAC 46:XLVII.Subpart 1., should not have any impact on family as defined by R.S. 49:972. There should not be any effect on the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, and/or the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments until 3:30 p.m., May 10, 2005, to Claire Doody Glaviano, Board of Practical Nurse Examiners, 3421 N. Causeway, Ste. 505, Metairie, LA 70002.

Claire Doody Glaviano  
Executive Director



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Program Closure and Reapplication**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The only cost associated with the implementation of the proposed rule changes will be the cost to publish the rule in the Louisiana Register at \$100 in FY 05.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no financial effect upon state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule will have no significant effect on costs and/or economic benefits to directly affected persons, or nongovernmental groups. The proposed rule provides for the board to determine, on a case by case basis, whether to allow currently enrolled students to complete a practical nursing program closed for cause. It also provides for a three year waiting period before a program closed for cause may reapply for a new practical nursing program; persons affiliated with a closed program may only apply after an affirmative showing that a program is in the best interest of the public health safety and welfare.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated effect on competition and employment.

Claire Doody Glaviano  
RN, MN  
Executive Director  
0504#004

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

**Lead Poisoning Prevention Program  
(LAC 48:V.7005, 7007, and 7009)**

Under the authority of R.S. 40:5 and R.S. 40:1299.21, 22, 23 and 25 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health proposes to amend LAC 48:V.7005-7007. The proposed Rule pertains to mandatory blood lead screening in designated high risk geographical areas pursuant to Act 893 of 2004. The former Sections 7005 and 7007, pertaining to case reporting and surveillance reporting, are restated with some changes and recodified as 7007 and 7009 respectively as the new blood lead screening regulation will occupy 7005. Also, some of the reportable data fields for surveillance reporting that had been optional will be changed to required fields to report.

**Title 48**

**PUBLIC HEALTH GENERAL**

**Part V. Public Health Services**

**Subpart 19. Genetic Diseases Services**

**Chapter 70. Lead Poisoning Prevention Program**

**§7005. Mandatory Blood Lead Screening of Children in High Risk Geographical Areas**

A. Based on surveillance data gathered by the State Childhood Lead Poisoning Prevention Program and review by the State Health Officer and representatives from medical schools in the state, the following parishes are identified as high risk for lead poisoning: Orleans, Tensas, West Carrol, Morehouse.

B. Medical providers providing routine primary care services to children age 6 months to 72 months residing or spending more than 10 hours per week in these parishes must have such children screened in accordance to practices consistent with current Center for Disease Control and Prevention guidelines, which include the following specifications:

1. administration of a risk assessment questionnaire at every well baby visit;
2. use a blood lead test to screen all children ages 1 and 2 years old;
3. blood lead levels  $\leq 15 \mu\text{g/dL}$  obtained from finger stick sample will be confirmed using a venous blood sample;
4. screen all children 36 to 72 months of age who have not been previously screened.

C. Identified high-risk areas will be assessed every April and any additions or deletions will be provided through amendment of LAC 48:V.7005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and under the authority of R.S. 40:5, 40:1299.21, 40:1299.22, 40:1299.23, and 40:1299.25.

HISTORICAL NOTE: by the Department of Health and Hospitals, Office of Public Health, LR 31:

**§7007. Mandatory Case Reporting by Health Care Providers**

A. Medical providers must report a lead case to the Lead Poisoning Prevention Program, Office of Public Health within 48 hours to ensure appropriate and timely follow-up. All health care providers shall assure that all the following information is completed for all blood lead analysis ordered by the health care provider and that this information accompanies the sample to the testing laboratory:

1. child's name;
2. parent's or the guardian's name;
3. child's street and mailing address, including the city, state, parish, and zip code;
4. child's date of birth;
5. child's sex;
6. child's race;
7. child's national origin;
8. child's social security number;
9. phone number where the child can be reached;

10. Medicaid number, if any;
11. type of sample (venous or capillary);
12. sample date;
13. type of test: first, annual, or repeat test;
14. blood lead level results in micrograms per deciliter (F g/dl).

B. Lead cases along with the specified information can be reported either by fax at (504) 568-7722 or by telephone at (504) 568-5070, and followed up by the mailing of the information to the Louisiana Childhood Lead Poisoning Prevention Program, Office of Public Health, Room 308, 325 Loyola Avenue, New Orleans, LA. 70112.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and under the authority of R.S. 40:5, 40:1299.21, 40:1299.22, 40:1299.23, and 40:1299.25.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 26:85 (January 2000), amended LR 27:52 (January 2001), LR 31:

**§7009. Reporting Requirements of Blood Lead Levels by Laboratories for Public Health Surveillance**

A. Clinical laboratories responsible for conducting analysis to determine blood lead levels, and/or responsible for reporting the results of analysis to referring laboratories and other health care providers, shall also report the results to the Louisiana Office of Public Health at least monthly to the Lead Poisoning Prevention Program at the address listed in §7007.B. The following information is mandatory and essential for appropriate monitoring, screening and treatment of lead poisoning.

1. All results of blood lead testing for children between the ages of 6 to 72 months of age must be reported, regardless of the test results.

2. Laboratories must collect and report all of the information specified in items §7007.A.1-14.

3. Laboratories can report the information required by this rule to the Office of Public Health by electronic transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and under the authority of R.S. 40:5, 40:1299.21, 40:1299.22, 40:1299.23, and 40:1299.25.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 26:85 (January 2000), amended LR 27:53 (January 2001), LR 31:

**Family Impact Statement**

1. The Effect on the Stability of the Family. The proposed Rule represents a positive action toward the stability of the family as it is designed to prevent childhood lead poisoning.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This proposed Rule will provide more timely information to the parents about their child's blood lead status. An elevated blood lead result will allow parents and their medical provider to respond rapidly and prevent further lead exposure.

3. The Effect on the Functioning of the Family. The proposed Rule represents a positive action toward the functioning of the family as it is designed to prevent lead poisoning of children.

4. The Effect on the Family Earnings and Family Budget. Parents of children not covered by Medicaid or medical insurance will have to pay for the cost of a blood

lead test which ranges from \$16 to \$25. However, this is a miniscule amount compared to the cost of a child with lead poisoning who could require an expensive hospitalization and/or special educational services.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed Rule is beneficial toward the behavior and personal responsibility of children as it will better ensure that children with lead poisoning will be detected and treated early, thus preventing the neurological problems associated with this environmental disease.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. There is no problem anticipated with performing the function as contained in the proposed Rule.

A public hearing will be held on April 27, 2005, at 10 a.m. in Room 511 of the State Office Building in New Orleans located at 325 Loyola Avenue. Interested persons may submit written comments relative to this proposed Rule until April 20, 2005, to Rhonda Smith at the Childhood Lead Poisoning Prevention Program, P.O. Box 60630, Room 308, New Orleans, LA 70160-0630 or by FAX to number 504/568-7722.

Frederick P. Cerise, M.D.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Lead Poisoning Prevention Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The cost to the Office of Public Health for implementing this rule is approximately \$200 for publishing the Notice of Intent and the Rule in the *Louisiana Register*. The cost to Medicaid for FY '06 and FY '07 is determined by the number of additional tests (7,904) multiplied by the amount Medicaid reimburses for blood lead tests (\$14.28), which totals \$112,869. Provider education, enforcement and the continued surveillance activities will be absorbed by OPH through existing resources. The Office of Group Benefits is unable to determine an amount of cost represented by the additional testing, but does anticipate the cost to be minimal.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Medical Vendor Payments Program of DHH will draw down approximately \$79,121 of federal matching funds to cover the cost of additional tests. No other revenue collections are anticipated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Parents, guardians and medical insurance carriers of non-Medicaid children being screened for lead poisoning will probably incur the cost of the test ranging from \$16 to \$25 dollars. However, early screening with timely follow-up will prevent the neurological, behavioral and cognitive problems associated with childhood lead

poisoning and the high long term costs of special services to address these problems.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is anticipated by this proposed rule.

Sharon G. Howard  
Assistant Secretary  
0504#066

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

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

Adult Dentures  
(LAC 50:XXV.Chapters 1-7)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to repeal the provisions contained in LAC 50:XVII.30101-30701 and repromulgate these provisions as LAC 50:XXV.101-701 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 promulgated a Rule to adopt the provisions governing the Adult Denture Program (*Louisiana Register*, Volume 31, Number 1). In compliance with guidelines established by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the bureau proposes to repeal the provisions governing adult denture services in LAC 50:XVII under the Durable Medical Equipment Program and repromulgate these provisions as LAC 50:XXV.101-701.

### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXV. Adult Dentures

#### Chapter 1. General Provisions

#### §101. Prior Authorization

A. Only those services specified as covered under the Adult Denture Program are reimbursable and then only as allowed by this Part XXV.

B. Prior authorization is required for all adult denture services except for denture repairs. Items requiring prior authorization are noted with an asterisk in §501.

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 31:80 (January 2005), repromulgated LR 31:

#### Chapter 3. Provider Participation and Recipient Criteria

#### §301. Participation Requirement

A. Provider participation is limited to those dentists who are duly licensed and authorized to practice dentistry in the state of Louisiana and who are enrolled in the Medicaid Program as a dental 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 31:80 (January 2005), repromulgated LR 31:

#### §303. Recipient Qualifications

A. Medicaid recipients who are 21 years of age and older and whose Medicaid coverage includes the full range of Medicaid services are eligible for denture services. Recipients who are not eligible for adult denture services include, but are not limited to, recipients who are certified as Qualified Medicare Beneficiary only (QMB only), adult recipients who are certified for Medicaid in the Medically Needy Program and pregnant women who are certified with presumptive eligibility.

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 31:80 (January 2005), repromulgated LR 31:

#### Chapter 5. Covered Services

#### §501. Adult Denture Services

A. Only the following services are reimbursable under the Adult Denture Program and only in accordance with program policy and guidelines:

1. comprehensive oral examination\*;
2. intraoral radiographs, complete series\*;
3. complete denture, maxillary\*;
4. complete denture, mandibular\*;
5. immediate denture, maxillary\*;
6. immediate denture, mandibular\*;
7. maxillary partial denture, resin base (including clasps)\*;
8. mandibular partial denture, resin base (including clasps)\*;
9. repair broken complete denture base;
10. replace missing or broken tooth, complete denture, per tooth;
11. repair resin denture base, partial denture;
12. repair or replace broken clasp, partial denture;
13. replace broken teeth, partial denture, per tooth;
14. add tooth to existing partial denture;
15. add clasp to existing partial denture;
16. reline complete maxillary denture (laboratory)\*;
17. reline complete mandibular denture (laboratory)\*;
18. reline maxillary partial denture (laboratory)\*;
19. reline mandibular partial denture (laboratory)\*;
20. unspecified removable prosthodontic procedure, by report\*.

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 31:81 (January 2005), repromulgated LR 31:

#### §503. Denture Replacement and Denture Reline

A. Only one complete or partial denture per arch is allowed in a seven-year period. The seven-year time period begins from the date the previous complete or partial denture for the same arch was delivered. A combination of two complete or partial denture relines per arch or one complete or partial denture and one reline per arch is allowed in a

seven-year period, as prior authorized by BHSF or its designee.

B. For relines, at least one year shall have elapsed since the complete or partial denture was delivered or last relined.

C. Cast partial dentures continue to be a noncovered service in the Adult Denture Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:81 (January 2005), repromulgated LR 31:

**Chapter 7. Reimbursement**

**§701. Fees**

A. Fees for these services shall be reimbursed as established in the Adult Denture Program fee schedule.

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 31:81 (January 2005), repromulgated LR 31:

**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.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, May 24, 2005, at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, 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: Adult Dentures**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 04-05. It is anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in FY 04-05 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 04-05. It is anticipated that \$204 will be expended in FY 04-05 for the federal share of the expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This rule proposes to repeal the provisions for Adult Dentures contained in LAC 50:XVII and repromulgate the provisions in LAC 50:XXV (places Adult Dentures in the proper section of the administrative code). It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for FY 05-06, FY 06-07 and FY 07-08.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known impact on competition and employment.

Ben A. Bearden  
Director  
0504#069

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Home Health Program  
(LAC 50:XIII.Chapters 1-7 and 101-129)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to repeal the provisions contained in LAC 50:XIX.Subpart 1 and LAC 50:XVII and repromulgate these provisions in LAC 50:XIII 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 promulgated rules to adopt the provisions governing the Home Health and Durable Medical Equipment Programs (*Louisiana Register*, Volume 30, Numbers 3 and 5). In compliance with guidelines established by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the bureau proposes to repeal the provisions governing durable medical equipment, supplies and appliances in LAC 50:XVII and repromulgate these provisions in LAC 50:XIII under the Home Health Program. In order to facilitate this transition, the bureau also proposes to repeal the provisions governing home health services in LAC 50:XIX.Subpart 1 and repromulgate these provisions in LAC 50:XIII.

**Title 50  
PUBLIC HEALTH MEDICAL ASSISTANCE  
Part XIII. Home Health  
Subpart 1. Home Health Services**

**Chapter 1. General Provisions  
§101. Definitions**

A. The following words and terms, when used in this Subpart 1, shall have the following meanings, unless the context clearly indicates otherwise.

*Home Health Aide Services* Direct care services to assist in the treatment of the patient's illness or injury provided under the supervision of a registered nurse and in compliance with the standards of nursing practice governing

delegation, including assistance with the activities of daily living such as mobility, transferring, walking, grooming, bathing, dressing or undressing, eating, or toileting.

**Home Health Services** Patient care services provided in the patient's home under the order of a physician that are necessary for the diagnosis and treatment of the patient's illness or injury, including one or more of the following services:

- a. nursing;
- b. physical therapy;
- c. speech-language therapy;
- d. occupational therapy;
- e. home health aide services; or
- f. medical supplies, equipment and appliances suitable for use in the home.

**Occupational Therapy Services** Medically prescribed treatment to improve or restore a function which has been impaired by illness or injury or, when the function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning.

**Physical Therapy Services** Rehabilitative services necessary for the treatment of the patient's illness or injury or, restoration and maintenance of function affected by the patient's illness or injury. These services are provided with the expectation, based on the physician's assessment of the patient's rehabilitative potential that:

- a. the patient's condition will improve materially within a reasonable and generally predictable period of time; or
- b. the services are necessary for the establishment of a safe and effective maintenance program.

**Nursing Services** Services provided on a part-time or intermittent basis by a registered nurse or licensed practical nurse that are necessary for the diagnosis and treatment of a patient's illness or injury. These services shall be consistent with:

- a. established Medicaid policy;
- b. the nature and severity of the recipient's illness or injury;
- c. the particular medical needs of the patient; and
- d. the accepted standards of medical and nursing practice.

**Speech-Language Therapy Services** Those services necessary for the diagnosis and treatment of speech and language disorders that result in communication disabilities, and for the diagnosis and treatment of swallowing disorders (dysphagia), regardless of a communication disability.

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 30:430 (March 2004), repromulgated LR 31:

### **§103. Requirements for Home Health Services**

A. Home health services shall be based on an expectation that the care and services are medically reasonable and appropriate for the treatment of an illness or injury, and that the services can be performed adequately by the agency in the recipient's place of residence. A written plan of care for services shall be evaluated and signed by the physician every 60 days. This plan of care shall be maintained in the recipient's medical records by the home health agency.

B. Medicaid recipients who are linked to a CommunityCare primary care physician (PCP) must have a referral from the PCP for home health 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 30:431 (March 2004), repromulgated LR 31:

### **§105. Provider Responsibilities**

A. Home health agencies must comply with the following requirements as condition for participation in the Medicaid Program.

1. The home health agency must provide to the bureau, upon request, the supporting documentation verifying that the recipient meets the medical necessity criteria for services.

2. Home health services shall be terminated when the goals outlined in the plan of care have been achieved, regardless of the number of days or visits that have been approved.

3. The home health agency must ensure that the family is instructed on a home maintenance exercise program which has been established by the treating physical therapist.

4. The home health agency shall discharge a patient once it has been determined that the patient or his/her legally responsible caregiver is noncompliant with the treatment regimen, keeping medical appointments and/or assisting with medication compliance and med-pack setups.

5. The home health agency must report complaints and suspected cases of abuse or neglect of a home health recipient to the appropriate authorities if the agency has knowledge that a minor child, a nonconsenting adult or a mentally incompetent adult has been abused or is not receiving proper medical care due to neglect or lack of cooperation on the part of the legal guardians or caretakers. This includes knowledge that a recipient is routinely taken out of the home by a legal guardian or caretaker against medical advice or when it is obviously medically contraindicated.

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 30:431 (March 2004), repromulgated LR 31:

## **Chapter 3. Medical Necessity**

### **§301. General Provisions**

A. Medical necessity for home health services is determined by the recipient's illness and/or injury and functional limitations. All home health services shall be medically reasonable and appropriate. To be considered medically reasonable and appropriate, the care must be necessary to prevent further deterioration of a recipient's condition regardless of whether the illness or injury is acute, chronic or terminal. The services must be reasonably determined to:

1. diagnose, cure, correct or ameliorate defects, physical and mental illnesses, and diagnosed conditions of the effects of such conditions; or

2. prevent the worsening of conditions, or the effects of conditions, that:

- a. endanger life or cause pain;
- b. result in illness or infirmity; or
- c. have caused, or threatened to cause, a physical or mental dysfunction, impairment, disability, or developmental delay; or

3. effectively reduce the level of direct medical supervision required or reduce the level of medical care or services received in an inpatient or residential care setting; or

4. restore or improve physical or mental functionality, including developmental functioning, lost or delayed as the result of an illness, injury, or other diagnosed condition or the effects of the illness, injury or condition; or

5. provide assistance in gaining access to needed medical, social, educational and other services required to diagnose, treat, or support a diagnosed condition or the effects of the condition, in order that the recipient might attain or retain:

- a. independence;
- b. self-care;
- c. dignity;
- d. self-determination;
- e. personal safety; and
- f. integration into all natural family, community, and facility environments and activities.

B. Home health nursing and aide services are considered medically reasonable and appropriate when the recipient's medical condition and medical records accurately justify the medical necessity for services to be provided in the recipient's home rather than in a physician's office, clinic, or other outpatient setting according to guidelines as stated in this Subpart.

C. Home health services are appropriate when a recipient's illness, injury, or disability causes significant medical hardship and would interfere with the effectiveness of the treatment if he/she had to go to a physician's office, clinic, or other outpatient setting for the needed service. Any statement on the plan of care regarding this medical hardship must be supported by the totality of the recipient's medical records.

D. The following circumstances are not considerations when determining medical necessity for home health services:

- 1. inconvenience to the recipient or the recipient's family;
- 2. lack of personal transportation; or
- 3. failure or lack of cooperation by a recipient or a recipient's legal guardians or caretakers to obtain the required medical services in an outpatient setting.

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 30:431 (March 2004), repromulgated LR 31:

### §303. Infants and Toddlers

A. For the purpose of this Subpart 1, *infants or toddlers* are defined as young children, up to age 3, who have not learned to ambulate without assistance.

B. Home health services are considered to be medically necessary for an infant or toddler when the primary care physician has advised against removing the infant or toddler from the home because it would:

- 1. place the infant or toddler at serious risk of infection;
- 2. greatly delay or hamper the recovery process;
- 3. cause significant further debilitation of an existing medical condition or physical infirmity;
- 4. seriously threaten to cause or aggravate a handicap or a physical deformity or malfunction;
- 5. cause great suffering or pain;
- 6. seriously endanger the well being of the infant or toddler; or
- 7. otherwise be considered medically contraindicated.

C. The following circumstances are not considered when determining the medical necessity of home health services for infants and toddlers:

- 1. the provision of services in the home is solely a matter of convenience;
- 2. a lack of personal transportation; or
- 3. failure or lack of cooperation by the child's legal guardian(s) to obtain the required medical services in an outpatient setting.

NOTE: The fact that an infant or toddler cannot ambulate or travel without assistance from another is not a factor in determining medical necessity 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 30:432 (March 2004), repromulgated LR 31:

## Chapter 5. Service Limitations

### §501. Home Health Visits

A. Home health services are limited to 50 nursing and/or aide visits per year, one service per day for recipients who are 21 years of age and older.

B. The service limitation of 50 nursing and/or aide visits per year, one service per day is not applicable for recipients who are from birth up to the age of 21. However, home health services provided to recipients up to the age of 21 are subject to post-payment review in order to determine if the recipient's condition warrants high utilization.

C. The service limitation of 50 home health visits per year is not applicable for rehabilitation 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 30:432 (March 2004), repromulgated LR 31:

## Chapter 7. Rehabilitation Services

### §701. Introduction

A. Rehabilitation services include coverage of physical therapy, occupational therapy and speech therapy.

B. All home health rehabilitation services must be prior authorized through the fiscal intermediary's Prior Authorization Unit in order to receive payment.

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 27:730 (May 2001), repromulgated LR 31:

### §703. Reimbursement (0 Up to Age 3)

A. The following rehabilitation services are reimbursed under Medicaid as a home health service by a home health agency rendered to Medicaid-eligible recipients ages 0 up to

age 3 regardless of the type of provider performing the services.

Procedure	Rate
Initial speech/language evaluation	\$ 70.00
Initial hearing evaluation	\$ 70.00
Speech/language/hearing therapy, 60 minutes	\$ 56.00
Visit w/procedure(s), 45 minutes	\$ 56.00
Visit w/procedure(s), 60 minutes	\$ 74.00
Visit w/procedure(s), 90 minutes	\$112.00
Procedures and modalities, 60 minutes	\$ 74.00
Physical therapy and rehab evaluation	\$ 75.00
Initial occupational therapy evaluation	\$ 70.00
Occupational therapy, 45 minutes	\$ 45.00
Occupational therapy, 60 minutes	\$ 60.00
Physical therapy, 1 modality	\$ 37.00
Physical therapy, 2 or more modalities	\$ 56.00
Physical therapy, 1 or more procedures, and/or modalities, 15 minutes	\$ 18.50
Physical therapy w/procedures, 30 minutes	\$ 37.00
Physical therapy w/procedures, 75 minutes	\$ 92.50
Occupational therapy, 15 minutes	\$ 15.00
Occupational therapy, 30 minutes	\$ 30.00
Speech and hearing therapy, 15 minutes	\$ 14.00
Speech and hearing therapy, 30 minutes	\$ 28.00
Speech and hearing therapy, 45 minutes	\$ 42.00
Speech and hearing therapy, 60 minutes	\$ 56.00

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 30:1035 (May 2004), repromulgated LR 31:

**§705. Reimbursement (Ages 3 and Above)**

A. Home health rehabilitation services will be reimbursed at the rate paid for outpatient hospital rehabilitation services as of September 15, 2002.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1127 (July 2003), repromulgated LR 31:

**Subpart 3. Equipment, Supplies and Appliances**

**Chapter 101. General Provisions**

**Subchapter A. Reserved.**

**Subchapter B. Prior Authorization**

**§10101. Purchase, Rental, and Repairs**

A. For the purchase of supplies, for the purchase or repair of medical equipment and appliances, prior authorization is required before payment can be issued.

B. Prior authorization is performed by the Medicaid fiscal intermediary under contractual arrangement with the Bureau of Health Services Financing and is the responsibility of the Prior Authorization Unit (PAU).

C. Every prior authorization request shall contain:

1. medical information from a physician, including:

a. a written prescription from a licensed physician, a physician's order form signed by the prescribing physician, or a provider-designed equipment list signed by the prescribing physician;

b. the diagnosis related to the request;

c. the length of time that the supplies, equipment, or appliance will be needed; and

d. other medical information to support the need for the requested item, including documentation that the medical criteria specific to the requested items are met;

2. if pertinent, a statement from the prescribing physician or appropriate licensed rehabilitation therapist as to whether the recipient's age and circumstances indicate that he can adapt to or be trained to use the item effectively;

3. any other pertinent information, such as measurements to assure correct size of appliance; and

4. a written price quotation including any charge for an initial adjustment, delivery, and/or set-up of the item. Sales tax is not applicable.

D. Emergency Requests. Emergency requests for prior authorization decisions may be considered for equipment or supplies requested during hospitalization of a recipient which is medically necessary for hospital discharge and is to be furnished for use in an outpatient setting.

**E. Requests for Repairs, Modification, or Additional Components to Equipment**

1. Requests for basic repairs to equipment shall contain medical information from a physician that is required for purchase/rental of equipment.

2. Requests for repairs or replacements of original equipment components or parts, other than for customized wheelchairs, that was previously approved for purchase by Medicaid do not require a submittal of a new prescription or medical information unless the provider does not have the following identified information:

- a. a copy of the original request for approval;
- b. the original prior authorization number; or
- c. a copy of the original prescription.

F. If one or more of these items are available, the provider may submit the prior authorization request with the original prescribing physician's name, prescription date, and diagnosis codes. The original approval date or prior authorization number shall be noted on the request form or a copy of the original prescription attached.

G. If these items are not available, a new request with all required information must be submitted for approval.

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 31:85 (January 2005), repromulgated LR 31:

**Subchapter C. Provider Participation**

**§10117. Provider Responsibilities**

A. Providers may not deliver more than one month's approval of supplies initially and all subsequently approved supplies must be delivered in increments not to exceed one month's rations.

B. The recipient must be Medicaid eligible on the date of service for payment to be made. The date of service is the date of delivery, unless delivered through a mail courier service.

C. The date of shipping will be considered the date of service for all durable medical equipment delivered through mail courier service.

D. Providers who make or sell medical equipment must provide a warranty which lasts at least one year from the time the equipment is delivered to the customer. If, during

that year, the equipment does not work, the manufacturer or dealer must repair or replace the equipment.

E. Providers who rent medical equipment must provide a full-service warranty covering the authorized period(s) of the rental agreement.

F. Providers must furnish a comparable, alternate device while repairing the beneficiary's device during a warranty period.

G. For any appliance which requires skill and knowledge to use, the DME provider must provide appropriate training for the recipient and must provide documentation of plans for training upon the request of the prior authorization unit.

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 31:85 (January 2005), repromulgated LR 31:

### **Chapter 103. Reimbursement**

#### **§10301. Reimbursement Methodology**

A. Unless otherwise stated in this Part XIII, the reimbursement for all durable medical equipment supplies and items is established at:

1. seventy percent of the 2000 Medicare fee schedule for all procedure codes that were listed on the 2000 Medicare fee schedule and at the same amount for the HIPAA compliant codes which replaced them; or

2. seventy percent of the Medicare fee schedule under which the procedure code first appeared; or

3. seventy percent of the manufacturer's suggested retail price (MSRP) amount; or

4. billed charges, whichever is the lesser amount.

B. If an item is not available at the rate of 70 percent of the applicable established flat fee or 70 percent of the MSRP, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

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 31:86 (January 2005), repromulgated LR 31:

#### **§10303. Medicare Part B Claims**

A. The Medicare payment to the Medicaid rate on file is compared to the Medicare Part B claims for durable medical equipment and supply items. If the Medicare payment exceeds the Medicaid rate, the claim is adjudicated as a paid claim with a zero payment. If the Medicaid rate exceeds the Medicare payment, the claim is reimbursed at the lesser of the co-insurance and deductible or up to the Medicaid maximum payment.

B. If the Medicaid payment is reduced or eliminated as a result of the Medicare/Medicaid payment comparison, the amount of the Medicare payment plus the amount of the Medicaid payment (if any) shall be considered to be payment in full for the service. The recipient does not have any legal liability to make payment for the 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 30:1027 (May 2004), repromulgated LR 31:

### **Chapter 105. Vagus Nerve Stimulator**

#### **§10501. Prior Authorization**

A. The Vagus Nerve Stimulator (VNS) is an implantable device used to assist in the control of seizures related to epilepsy and must be prescribed by a physician. Implantation of the VNS device and all related procedures must be authorized by the department based on criteria in §§10503 - 10507.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2799 (December 2003), repromulgated LR 31:

#### **§10503. Recipient Criteria**

A. Inclusion Criteria. Consideration shall be given for Medicaid reimbursement for implantation of the VNS if the treatment is considered medically necessary and the patient meets all of the following criteria. The patient:

1. has medically intractable epilepsy;

2. is 12 years of age or older, although case-by-case consideration may be given to younger children who meet all other criteria and have sufficient body mass to support the implanted system;

3. has a diagnosis of partial epilepsy confirmed and classified according to the International League Against Epilepsy classification. The patient may also have associated generalized seizures, such as tonic, tonic-tonic, or atonic. The VNS may have efficacy in primary generalized epilepsy as well;

4. has seizures that resist control by antiepilepsy treatment, with adequately documented trials of appropriate antiepilepsy drugs or documentation of the patient's inability to tolerate these medications;

5. has undergone surgical evaluation and is not considered to be an optimal candidate for epilepsy surgery;

6. is experiencing at least four to six identifiable partial onset seizures each month. The patient must have had a diagnosis of intractable epilepsy for at least two years. The two-year period may be waived if it is deemed that waiting would be harmful to the patient;

7. has undergone Quality of Life (QOL) measurements. The choice of instruments used for the QOL must assess quantifiable measures of day-to-day life in addition to the occurrence of seizures. In the expert opinion of the treating physician, and clearly documented in the request for prior authorization, there must be reason to believe that QOL will improve as a result of the VNS implant. This improvement should be in addition to the benefit of seizure frequency reduction.

B. Exclusion Criteria. Regardless of the provisions of §10503.A, authorization for implantation of a VNS shall not be given if the patient meets one or more of the following criteria. The patient:

1. has psychogenic seizures or other nonepileptic seizures; or

2. has systemic or localized infections that could infect the implanted system; or

3. has a body mass that is insufficient to support the implanted system; or



4. has a progressive disorder that is a contraindication to VNS implantation. Examples are malignant brain neoplasm, Rasmussen's encephalitis, Landau-Kleffner Syndrome and progressive metabolic and degenerative disorders. Progressive disorders, psychosis, or mental retardation that are not contraindications to VNS implantation are not exclusion criteria. Taking into consideration the additional diagnosis, the treating physician must document the benefits of the VNS.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2799 (December 2003), repromulgated LR 31:

#### **§10505. Reprogramming Vagus Nerve Stimulator**

A. The programming of the VNS stimulator must be performed by the neurosurgeon who performed the implant procedure or a licensed neurologist. Programming subsequent to the first three times may be subject to post authorization review for medical necessity prior to payment of the claim. Authorization for payment will only be considered when there is documented evidence to show that the recipient has experienced seizures since previous programming attempts. Payment for the programming procedure will only be authorized when it is performed as an attempt to reduce or prevent future episodes of seizures.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2800 (December 2003), repromulgated LR 31:

#### **§10507. Subsequent Implants/Battery Replacement**

A. Requests to replace batteries or for new implants must be submitted with documentation that shows that the recipient was benefiting from the original VNS transplant.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2800 (December 2003), repromulgated LR 31:

### **Chapter 107. Wheelchairs and Accessories**

#### **Subchapter A. Wheelchairs, Motorized and/or Custom Motorized**

##### **§10701. Recipient Criteria**

###### **A. Motorized Wheelchairs**

1. For purposes of this Chapter 107, the term *motorized* shall have the same meaning as power, electric or any means of propulsion other than manual. A motorized wheelchair must be medically necessary. The recipient must meet all of the following criteria in order to be considered for a motorized wheelchair:

a. the recipient is not functionally ambulatory. Not functionally ambulatory means the recipient's ability to ambulate is limited such that without use of a wheelchair, he/she would otherwise be generally bed or chair confined;

b. the recipient is unable to operate a wheelchair manually due to severe weakness of the upper extremities due to a congenital or acquired neurological or muscular disease/condition or is unable to propel any type of manual wheelchair because of other documented health problems; and

c. the recipient is capable of safely operating the controls for a motorized wheelchair and can adapt to or be trained to use a motorized wheelchair effectively.

B. A motorized wheelchair is covered if the recipient's condition is such that the requirement for a motorized wheelchair is long term (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 30:251 (February 2004), repromulgated LR 31:

#### **§10703. Prior Authorization**

A. All wheelchairs and modifications required to meet the needs of a particular recipient are subject to prior authorization. Prior authorization will be made for only one wheelchair at a time. Backup chairs, either motorized or manual, will be denied as not medically necessary. All requests must include:

1. a completed PA-01 form;

2. a physician's prescription for a motorized wheelchair. If the recipient is enrolled in CommunityCare, the prescription must be written by the recipient's primary care physician (PCP). The physician must specifically state that the prescription is for a motorized wheelchair;

3. medical documentation from a physician is required to support the provisions set forth in §10701.A.1.a-b;

4. a seating evaluation performed, signed and dated by the physical therapist or occupational therapist that performed the seating evaluation. The seating evaluation shall:

a. indicate the appropriateness of the specific wheelchair requested and all modifications and/or attachments to the specific wheelchair and its ability to meet the recipient's long-term medical needs. Options that are primarily beneficial in allowing the recipient to perform leisure or recreational activities are not covered;

b. include the dated signature of the physician who prescribed the motorized wheelchair, confirming:

i. the recipient's diagnosis or condition is such that a motorized wheelchair is medically necessary; and

ii. he or she has seen the seating evaluation and motorized wheelchair recommendation;

5. documentation indicating that the recipient is capable of safely operating the controls for a motorized wheelchair and can adapt to or be trained to use the motorized wheelchair effectively. It is not sufficient for a Medicaid provider of motorized wheelchairs to indicate that a recipient is capable of safely operating the controls for a motorized wheelchair and can adapt to or be trained to use the motorized wheelchair effectively. Such documentation shall include:

a. a signed and dated statement from the recipient's physician, physical therapist or occupational therapist that he or she has determined that the recipient has the cognitive, motor and perceptual abilities needed to safely operate the controls of a motorized wheelchair. This statement shall be verified by the notes and recommendation of the physician, physical therapist or occupational therapist making such statement; and

b. a signed and dated statement from the recipient's physician, physical therapist or occupational therapist that he or she has determined that the recipient can adapt to or be

trained to use the motorized wheelchair effectively. This statement shall be verified by the notes and recommendation of the physician, physical therapist or occupational therapist making such statement.

**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 30:1027 (May 2004), repromulgated LR 31:

**§10705. Repairs and Modifications**

A. Requests for repairs to motorized wheelchairs will be considered for basic repairs only. Basic repairs are those which are requested to repair an existing component of the recipient's current motorized wheelchair.

B. Requests for modifications or reconstruction of the recipient's current motorized wheelchair shall not be considered basic repairs. Requests for modifications or reconstruction of the recipient's current motorized wheelchair must be submitted in accordance with prior authorization criteria. Modifications or reconstruction will be denied if it is more cost effective to provide a new motorized wheelchair.

C. It is expected that all repairs and modifications of motorized wheelchairs shall be completed within one month, unless there is a justifiable reason for a delay. Rental of a manual wheelchair may be prior authorized on a monthly basis as a temporary replacement, if necessary, when the recipient's motorized wheelchair is being repaired or modified.

**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 30:1028 May 2004), repromulgated LR 31:

**§10707. Reimbursement**

A. Reimbursement for wheelchairs with special features is 70 percent of the Medicare fee schedule amount or the amount of billed charges, whichever is the lesser amount for HCPC procedure codes:

1. E1050 - E1060;
2. E1070 - E1110;
3. E1170 - E1213;
4. E1221 - E1224;
5. E1240 - E1295;
6. K0002 - K0014.

a. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

B. Reimbursement for motorized-type customized wheelchairs is set to manufacturer's suggested retail price (MSRP) minus 17 percent.

C. Reimbursement for manual type customized wheelchairs and their components is set to MSRP minus 20 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 30:1028 May 2004), repromulgated LR 31:

**Subchapter B. Wheelchairs, Standard Type**

**§§10727- 10729. Reserved.**

**§10731. Reimbursement**

A. Reimbursement for standard type wheelchairs is 80 percent of the Medicare allowable fee or billed charges, whichever is the lesser amount, to the following Medicaid established flat fee amounts or billed charges, whichever is the lesser amount. The Medicaid established flat fee amounts are:

Code	Purchase	Rental
E1130 and K0001	\$250	\$35 per month
E1140	\$412.50	\$38.50 per month
E1150	\$453.75	\$42.35 per month
E1160	\$375	\$50 per month

B. If an item is not available at the established flat fee, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

**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 30:1028 (May 2004), repromulgated LR 31:

**Subchapter C. Wheelchair Accessories**

**§10749. Wheelchair Seat Cushions**

A. Seat cushions are approved when the recipient's skin condition or positioning necessitates its use, e.g., decubiti.

**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 30:1028 (May 2004), repromulgated LR 31:

**Chapter 109. Respiratory Equipment and Supplies**

**Subchapter A. Mucus Clearance (Flutter) Devices**

**§10901. General Provisions**

A. Mucus clearance (flutter) devices are used in the treatment of lung diseases or conditions producing retained secretions. Small hand-held mucus clearance (flutter) devices shall be subject to prior authorization when prescribed by a physician for recipients with lung diseases or conditions producing retained secretions.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:153 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 30:1028 (May 2004), repromulgated LR 31:

**Subchapter B. Nebulizer Equipment and Supplies**

**§§10905 - 10907. Reserved.**

**§10909. Reimbursement**

A. Reimbursement for nebulizer with compressor (E0570) is the lower of \$60 or the provider's usual and customary charge.

B. Administrative Supplies. Reimbursement for nebulizer administrative supplies is 70 percent of the Medicare fee schedule amount or the amount of billed charges, whichever is the lesser amount for HCPC codes A7003-A7017.

1. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:153 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 30:1029 (May 2004), repromulgated LR 31:

### **Subchapter C. Oxygen and Oxygen Supplies**

#### **§10913. Oxygen Concentrators**

A. Oxygen, breathing equipment such as IPPB (intermittent positive-pressure breathing), CPAP (continuous positive air pressure), and other types of equipment for oxygen delivery not specifically identified as payable are not covered under Title XIX (Medicaid) as a payable medical 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 30:1029 (May 2004), repromulgated LR 31:

#### **§10915. Reserved.**

#### **§10917. Reimbursement**

A. Reimbursement fee for oxygen concentrators is \$1,250 for purchase or \$150 per month for rental, or billed charges, whichever is the lesser amount. If the item is not available at the established rate, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

**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 30:1029 (May 2004), repromulgated LR 31:

### **Subchapter D. Compressors**

#### **§§10921 - 10923. Reserved.**

#### **§10925. Reimbursement**

A. Reimbursement for compressors is 70 percent of the Medicare fee schedule amount or the amount of billed charges, whichever is the lesser amount for HCPC Codes E0565.

B. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

**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 30:1029 (May 2004), repromulgated LR 31:

### **Subchapter E. Peak Flow Meters**

#### **§10927. Portable Manual Peak Flow Meters Prior**

##### **Authorization**

A. Portable manual peak flow meters are used for the treatment of asthma. This item is subject to prior authorization when prescribed by a physician for the measurement of lung function as part of an effective asthma management program.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1029 (May 2004), repromulgated LR 31:

### **Subchapter F. Suction Pumps and Supplies**

#### **§§10931 - 10935. Reserved.**

#### **§10937. Reimbursement**

A. Reimbursement for stationary suction machines is 80 percent of the Medicare allowable fee or billed charges, whichever is the lesser amount, to the following Medicaid established flat fee amounts or billed charges, whichever is the lesser amount. The Medicaid established flat fee for HCPC procedure code E0600 is:

1. \$225 to purchase;
2. \$35 for rental per month.

B. If an item is not available at the established flat fee, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

**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 30:1029 (May 2004), repromulgated LR 31:

### **Subchapter G. Humidifiers**

#### **§§10939–10941. Reserved.**

#### **§10943. Reimbursement**

A. Reimbursement for humidifiers is 70 percent of the Medicare fee schedule amount or the amount of billed charges, whichever is the lesser amount, for HCPC Codes E-0550-E0560.

B. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

**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 30:1028 (May 2004), repromulgated LR 31:

## Subchapter H. Ventilator and Tracheostomy Equipment and Supplies

§§10947 - 10963. Reserved.

### §10965. Reimbursement

A. Reimbursement is 70 percent of the Medicare fee schedule amount or billed charges, whichever is the lesser amount, for the following HCPC codes.

A4624-A4625	Suction catheters
A4621	Tracheostomy masks or collars
A4623	Tracheostomy cannulas

1. If an item is not available at 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

B. The reimbursement is reduced to 90 percent of the Medicare fee schedule amount or billed charges, whichever is the lesser amount, for the following HCPC codes.

A7521	Tracheostomy tubes
A4629	Tracheostomy care kits

1. If an item is not available at 90 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

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 30:1030 (May 2004), repromulgated LR 31:

## Subchapter I. Mechanical Percussors

§10969-10971. Reserved.

### §10973. Reimbursement

A. Reimbursement for percussors is 70 percent of the Medicare fee schedule amount or the amount of billed charges, whichever is the lesser amount, for HCPC Code E0480.

B. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

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 30:1030 (May 2004), repromulgated LR 31:

## Chapter 111. Augmentative and Alternative Communications (AAC) Devices

### Subchapter A. General Provisions

#### §11101. Definitions

*Augmentative and Alternative Communications (AAC) Devices.* Electronic or non-electronic aids, devices, or systems that assist a Medicaid recipient to overcome or ameliorate (reduce to the maximum degree possible) the communication limitations that preclude or interfere with

meaningful participation in current and projected medically necessary daily activities. Examples of AAC devices include:

1. communication boards or books, speech amplifiers, and electronic devices that produce speech and/or written output;
2. devices that are constructed for use as communication devices as well as systems that may include a computer, when the primary use of the computer serves as the recipient's communication device; and
3. related components and accessories, including software programs, symbol sets, overlays, mounting devices, switches, cables and connectors, auditory, visual, and tactile output devices, printers, and necessary supplies, such as rechargeable batteries.

*Meaningful Participation.* Effective and efficient communication of messages in any form the recipient chooses.

*Speech-Language Pathologist.* An individual who has:

1. been licensed by the Louisiana Board of Examiners for Speech Pathologists and Audiologists;
2. a certificate of clinical competence in speech language pathology from the American Speech-Language-Hearing Association;
3. completed the equivalent educational requirements and work experience necessary for the certificate; or
4. completed the academic program and is acquiring supervised work experience to qualify for the certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1481 (August 2003), repromulgated LR 31:

## Subchapter B. Recipient Eligibility

### §11109. Medical Necessity

A. Consideration shall be given for Medicaid reimbursement for AAC devices for Medicaid recipients if the device is considered medically necessary, the recipient has the ability to physically and mentally use a device and its accessories, and if the following criteria are met.

1. Medical Necessity Determinations. The following medically necessary conditions shall be established for recipients who/whose:

- a. have a diagnosis of a significant expressive or receptive (language comprehension) communication impairment or disability;
- b. impairment or disability either temporarily or permanently causes communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities; and
- c. had a speech-language pathologist (and other health professional, as appropriate):
  - i. perform an assessment and submit a report pursuant to the criteria set forth in §11121 Assessment/Evaluation; and
  - ii. recommend speech-language pathology treatment in the form of AAC devices and services; and
  - iii. document the mental and physical ability of a recipient to use, or learn to use, a recommended AAC device and accessories for effective and efficient communication; and

iv. prepare a speech-language pathology treatment plan that describes the specific components of the AAC devices and the required amount, duration, and scope of the AAC services that will overcome or ameliorate communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities; and

d. requested AAC devices constitute the least costly, equally effective form of treatment that will overcome or ameliorate communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities.

2. The following are additional general principles relating to medical necessity determinations for AAC devices:

a. no cognitive, language, literacy, prior treatment, or other similar prerequisites must be satisfied by a recipient in advance of a request for AAC devices;

b. the unavailability of an AAC device, component, or accessory for rental will not serve as the basis for denying a prior approval request for that device, component, or accessory;

c. the cause of the recipient's impairment or disability (e.g., congenital, developmental, or acquired), or the recipient's age at the onset of the impairment or disability, are irrelevant considerations in the determination of medical need;

d. recipient participation in other services or programs (e.g., school, early intervention services, adult services programs, employment) is irrelevant to medical necessity determination for AAC devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1482 (August 2003), repromulgated LR 31:

### Subchapter C. Provider Responsibilities

#### §11121. Assessment/Evaluation

A. An assessment, or evaluation, of the individual's functioning and communication limitations that preclude or interfere with meaningful participation in current and projected daily activities must be completed by a speech-language pathologist with input from other health professionals, (e.g., occupational therapists and rehabilitation engineers) based on the recommendation of the speech language pathologist and a physician's prescription, as appropriate.

1. Medicaid provides reimbursement for AAC assessments/evaluations.

B. Requests for AAC devices must include a description of the speech-language pathologist's qualifications, including a description of the speech-language pathologist's AAC services training and experience.

C. An assessment (augmentative and alternative communication evaluation) must include the following information about the recipient.

1. Identifying information:

a. name;

b. Medicaid identification number;

c. date of the assessment;

d. medical and neurological; diagnoses (primary, secondary, tertiary);

e. significant medical history;

f. mental or cognitive status; and

g. educational level and goals.

2. Sensory status:

a. vision and hearing screening (no more than one year prior to AAC evaluation);

b. if vision screening is failed, a complete vision evaluation;

c. if hearing screening is failed, a complete hearing evaluation;

d. description of how vision, hearing, tactile, and/or receptive communication impairments or disabilities affect expressive communication.

3. Postural, mobility, and motor status:

a. gross motor assessment;

b. fine motor assessment;

c. optimal positioning;

d. integration of mobility with AAC devices;

e. recipient's access methods (and options) for AAC devices.

4. Current speech, language, and expressive communication status:

a. identification and description of the recipient's expressive or receptive (language comprehension) communication impairment diagnosis;

b. speech skills and prognosis;

c. language skills and prognosis;

d. communication behaviors and interaction skills (i.e., styles and patterns);

e. functional communication assessment, including ecological inventory;

f. indication of past treatment, if any;

g. description of current communication strategies, including use of an AAC device, if any.

NOTE: If an AAC device is currently used, describe the device, when and by whom it was previously purchased, and why it is no longer adequate to meet the recipient's communication needs.

5. Communication needs inventory:

a. description of recipient's current and projected communication needs;

b. communication partners and tasks including partners' communication abilities limitations, if any; and

c. communication environments and constraints which affect AAC device selection and/or features (e.g., verbal and/or visual output and/or feedback; distance communication needs).

6. Summary of Communication Limitations. Description of the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities (i.e., why the recipient's current communication skills and behaviors prevent meaningful participation in the recipient's current and projected daily activities).

7. AAC devices assessment components:

a. vocabulary requirements;

b. representational system(s);

c. display organization and features;

d. rate enhancement techniques;

e. message characteristics, speech synthesis, printed output, display characteristics, feedback, auditory and visual output;

f. access techniques and strategies; and

g. portability and durability concerns, if any.

8. Identification of AAC devices considered for recipients:

a. identification of the significant characteristics and features of the AAC devices considered for the recipient; and

b. identification of the cost of the AAC devices considered for the recipient (including all required components, accessories, peripherals, and supplies, as appropriate).

9. AAC device recommendation:

a. identification of the requested AAC devices including all required components, accessories, software, peripheral devices, supplies, and the device vendor;

b. identification of the recipient's and communication partner's AAC devices preference, if any;

c. assessment of the recipient's ability (physically and mentally) to use, or to learn to use, the recommended AAC device and accessories for effective and efficient communication;

d. justification stating why the recommended AAC device (including description of the significant characteristics, features, and accessories) is better able to overcome or ameliorate the communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities, as compared to the other AAC devices considered;

e. justification stating why the recommended AAC device (including description of the significant characteristics, features, and accessories) is the least costly, equally effective, alternative form of treatment to overcome or ameliorate the communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities.

10. Treatment plan and follow-up:

a. description of short-term communication goals (e.g., six months);

b. description of long-term communication goals (e.g., one year);

c. assessment criteria to measure recipient's progress toward achieving short and long-term communication goals;

d. description of amount, duration, and scope of AAC services required for the recipient to achieve short and long term communication goals; and

e. identification and experience of AAC service provider responsible for training. These service providers may include, e.g.:

i. speech-language pathologists;

ii. occupational therapists;

iii. rehabilitation engineers;

iv. the recipient's parents, teachers; and

v. other service providers.

11. Summary of alternative funding source for AAC device:

a. description of availability or lack of availability, of purchase of AAC device through other funding sources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1482 (August 2003), repromulgated LR 31:

### §11123. Trial Use Periods

A. In instances where the appropriateness of a specific AAC device is not clear, a trial use period for an AAC device may be recommended (although it is not required) by the speech-language pathologist who conducts the AAC evaluation.

B. Prior authorization for rental of AAC devices shall be approved for trial use periods when the speech-language pathologist prepares a request consistent with the established requirements. The reasons for a trial use period request include, but are not limited to:

1. the characteristics of the recipient's communication limitations;

2. lack of familiarity with a specific AAC device; and

3. whether there are sufficient AAC services to support the recipient's use of the AAC device, or other factors.

C. If the speech-language pathologist recommends a trial use period, the pathologist must prepare a request that includes the following information:

1. the duration of the trial period;

2. the speech-language pathologist information and the recipient information as required in §11121, Assessment/Evaluation;

3. the AAC device to be examined during the trial period, including all the necessary components (e.g., mounting device, software, switches, or access control mechanism);

4. the identification of the AAC service provider(s) who will assist the recipient during the trial period;

5. the identification of the AAC services provider(s) who will assess the trial period; and

6. the evaluation criteria, specific to the recipient, that will be used to determine the success or failure of the trial period.

D. Trial use period requests must request Medicaid funding for the rental of all necessary components and accessories of the AAC device. If an accessory necessary for the trial use of a device by a recipient is not available for rental, but the communication device is available for rental for trial use, Medicaid may consider the purchase of the accessory for the trial use of the communication device by that recipient.

E. Trial periods may be extended and/or different AAC devices provided, when requested by the speech-language pathologist responsible for evaluating the trial use period.

F. Results of trial use periods must be included with any subsequent request for prior authorization of purchase of the AAC device. Recommendations for the purchase of an AAC device, as a result of a trial use period of the device, must clearly indicate the patient's ability to use the device during the trial period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1483 (August 2003), repromulgated LR 31:

### Subchapter D. Prior Authorization

#### §11133. Prior Authorization Request

A. All requests for AAC devices and accessories must be prior authorized by Medicaid in accordance with the criteria described in this Chapter 111.

B. Medicaid will not consider purchase of an AAC device when an alternative means of funding through another agency or other source (e.g., Louisiana rehabilitation services, school systems, private insurance, etc.) is available for the recipient. All requests should indicate the availability, or lack of availability, of purchase through other funding sources.

NOTE: AAC devices may be covered through the Durable Medical Equipment (DME) Program with prior authorization for Medicaid recipients residing in nursing homes (ICF I, II and SNF).

C. When the medical necessity can not be determined for an AAC device pursuant to the criteria stated above and to the information submitted in support of a prior authorization request, the following steps shall be taken.

1. If Medicaid determines that any essential information in establishing medical necessity for the AAC device is incomplete, or has been omitted in the prior authorization request as required in §11121, Assessment/Evaluation, Medicaid will make direct contact with the speech-language pathologist who conducted the assessment for the recipient. Medicaid will then identify the specific, additional information that is needed and request that the additional information be submitted; and/or

2. if Medicaid determines that an additional interpretation of information in the prior authorization request is needed by the medical reviewer in establishing medical necessity for an AAC device, Medicaid will seek the advice of speech language pathologist(s) with extensive AAC experience recommended to Medicaid by the American Speech Language and Hearing Association (ASHA), the United States Society for Augmentative and Alternative Communication (USSAAC), and/or the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA), who shall provide the required interpretation.

a. Only one request for additional information by direct contact with the speech/language pathologist and/or only one interpretation will be made per prior authorization request.

b. If additional information requested by Medicaid from the speech/language pathologist who conducted the assessment, or if an additional interpretation requested from a consulting speech-language pathologist, is not received by Medicaid within the 25-day time frame required of Medicaid for a prior authorization determination, a decision will be made by the medical reviewer for Medicaid based on the information that has been submitted with the prior authorization request and on the reviewer's interpretation of that information. If the additional information or additional interpretation is provided at a later time, another request must be submitted by the provider to the Prior Authorization Unit for additional review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1484 (August 2003), repromulgated LR 31:

## **Subchapter E. Repairs and Replacement**

### **§11143. Repairs**

A. Medicaid will cover repairs to keep AAC devices, accessories, and other system components in working condition. Medicaid coverage for repairs will include the

cost of parts, labor, and shipping, when not otherwise available without charge pursuant to a manufacturer's warranty.

1. Providers of AAC devices are expected to comply with the Louisiana New Assistive Devices Warranty Act.

a. One of the provisions of this law is that all persons who make, sell, or lease assistive devices, including AAC devices, must provide those who buy or lease the equipment with a warranty which lasts at least one year from the time the equipment is delivered to the customer.

b. If, during the warranty period, the equipment does not work, the manufacturer or dealer must make an attempt to repair the equipment.

2. Medicaid additionally requires providers to provide the recipient with a comparable, alternate AAC device while repairing the recipient's device during a warranty period.

3. Medicaid coverage may be provided for rental of an alternate AAC device during a repair period after expiration of the warranty.

4. Medicaid will not cover repairs, or rental of a loaner device, when repairs are made during a warranty period.

B. When a device is received by the provider for the purpose of repair, the provider will conduct an assessment of the device to determine whether it can be repaired, and if so, prepare a written estimate of the parts, labor, and total cost of the repair, as well as the effectiveness (i.e., estimated durability) of the repair. If the manufacturer or provider concludes that the device is not repairable and a replacement device is needed, written notice will be provided to the recipient.

C. Medicaid coverage for repairs greater than \$300 must be accompanied by a statement from the speech-language pathologist. The statement must indicate:

1. whether there have been any significant changes in the sensory status (e.g., vision, hearing, tactile); postural, mobility or motor status; speech, language, and expressive communication status; or any other communication need or limitation of the recipient as described in §11121.C.2-7.g and 10.a-e.v; and

2. whether the device remains the speech language pathologist's recommendation for recipient's use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1484 (August 2003), repromulgated LR 31:

### **§11145. Replacement or Modification**

A. Modification or replacement of AAC devices will be covered by Medicaid subject to the following limitations:

1. requests for modification or replacement of AAC devices and/or accessories may be considered for coverage after the expiration of three or more years from the date of purchase of the current device and accessories in use, except as stated in Paragraphs 4 and Subparagraph 5.a. of this Subsection A;

2. requests for modification or replacement require prior authorization and must include the recommendation of the speech-language pathologist;

3. requests for replacements of AAC devices may be submitted for identical or different devices;

4. requests for replacements of identical AAC devices must be accompanied by a statement from the provider that the current device can not be repaired or that replacement will be more cost effective than repair of the current device. Data must be provided about the following:

- a. age;
- b. repair history;
  - i. frequency;
  - ii. duration; and
  - iii. cost; and
- c. repair projections (estimated durability of repairs);

5. requests for modification or replacement of AAC devices with different devices must include the following additional information:

a. a significant change has occurred in the recipient's expressive communication, impairments, and/or communication limitations. Modification or replacement requests due to changed individual circumstances must be supported by a new assessment of communication limitations by a speech-language pathologist, and may be submitted at any time; or

b. even though there has been no significant change in the recipient's communication limitations, there has been a significant change in the features or abilities of available AAC devices (i.e., a technological change) that will overcome or permit an even greater amelioration of the recipient's communication limitations as compared to the current AAC device. A detailed description of all AAC device changes and the purpose of the changes must be provided with the results of a re-evaluation by a speech-language pathologist;

6. requests for replacements of AAC devices due to loss or damage (either for identical or different devices) must include a complete explanation of the cause of the loss or damage and a plan to prevent the recurrence of the loss or damage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:1485 (August 2003), repromulgated LR 31:

**Chapter 113. Bath and Toilet Aids**

**Subchapter A. Adaptive Hygiene Equipment** **Reserved.**

**Subchapter B. Commode Chairs**

**§§11305 - 11307. Reserved.**

**§11309. Reimbursement**

A. Reimbursement for commode chairs is 80 percent of the Medicare allowable fee or billed charges, whichever is the lesser amount, to the following Medicaid established flat fee amounts or billed charges, whichever is the lesser amount. The Medicaid established flat fee amounts will be as follows.

Code	Purchase Amount
E0163	\$ 55
E0164	\$ 83.55
E0165	\$ 85
E0166	\$142.80

B. If an item is not available at the established flat fee, the flat fee that will be utilized is the lowest cost at which

the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

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 30:1031 (May 2004), repromulgated LR 31:

**Chapter 115. Hospital Beds and Related Equipment**

**Subchapter A. Hospital Beds**

**§§11501 - 11503. Reserved.**

**§11505. Reimbursement**

A. Reimbursement for hospital beds is 80 percent of the Medicare allowable fee or billed charges, whichever is the lesser amount, to the following Medicaid established flat fee amounts or billed charges, whichever is the lesser amount. The Medicaid established flat fee amounts will be as follows.

Code	Purchase	Rental
E0255	\$ 650	\$75
E0265	\$1,250	\$75

B. If an item is not available at the established flat fee, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 30:1030 (May 2004), repromulgated LR 31:

**Subchapter B. Patient Lifts**

**§§11511-11513. Reserved.**

**§11515. Lift Sling Reimbursement**

A. Reimbursement for patient lift slings is 70 percent of the Medicare fee schedule amount or the amount of billed charges, whichever is the lesser amount for HCPC Code E0621.

B. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 30:1031 (May 2004), repromulgated LR 31:

**Chapter 117. Diabetic Equipment and Supplies**

**Subchapter A. Glucometers**

**§§11701 - 11703. Reserved.**

**§11705. Reimbursement**

A. Reimbursement for glucometers is \$30 for purchase, or billed charges, whichever is the lesser amount. If the item is not available at the established rate, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.



AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 30:1031 (May 2004), repromulgated LR 31:

## **Subchapter B. Continuous Subcutaneous Insulin External Infusion Pumps**

### **§11715. Introduction**

A. A continuous subcutaneous insulin external infusion pump is a portable, battery operated, insulin pump. It is about the size and weight of a small pager. The pump delivers a continuous basal infusion of insulin. Insulin pumps can be automatically programmed for multiple basal rates over a 24-hour time period. This can be useful for such situations as nocturnal hypoglycemia and the dawn phenomenon. Before meals or at other times (e.g., hyperglycemia after unanticipated caloric intake), the pump can be set to deliver a bolus of insulin, similar to taking an injection of pre-meal regular insulin for someone using multiple daily injections.

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, Bureau of Health Services Financing, LR 30:1697 (August 2004), repromulgated LR 31:

### **§11717. Prior Authorization**

A. Payment for a continuous subcutaneous insulin external infusion pump and related supplies will be authorized in the home setting, for treatment of Type I diabetes, when the following conditions are met.

1. The diabetes needs to be documented by a C-peptide level less than 0.5.

2. The pump must be ordered by and follow-up care of the patient must be managed by a physician who manages patients with continuous subcutaneous insulin infusion (CSII) and who works closely with a team including nurses, diabetes educators and dietitians who are knowledgeable in the use of CSII.

3. The patient:

a. has completed a comprehensive diabetes education program; and

b. has been on a program of multiple daily injections of insulin, (at least three injections per day), with frequent self-adjustments of insulin dose for at least six months prior to initiation of the insulin pump; and

c. has documented frequency of glucose self-testing an average of a least four times per day during the two months prior to initiation of the insulin pump; and

d. meets one or more of the following criteria while on the multiple daily injection regimen:

i. has a glycosylated hemoglobin level (HbA1c) greater than 7.0 percent;

ii. has a history of recurring hypoglycemia;

iii. has wide fluctuations in blood glucose before mealtime;

iv. has dawn phenomenon with fasting blood sugars frequently exceeding 200 mg/dl;

v. has a history of severe glycemic excursions.

B. Continuous subcutaneous insulin external infusion pumps shall be denied as not medically necessary and reasonable for all Type II diabetics including insulin-requiring Type II diabetics.

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, Bureau of Health Services Financing, LR 30:1697 (August 2004), repromulgated LR 31:

### **§11719. Reimbursement**

A. The Health Care Common Procedure Coding System shall be used to bill for diabetic equipment and supplies. These products shall meet approved Medicare guidelines and codes. Claims for continuous subcutaneous insulin external infusion pumps shall be reimbursed the lesser of 5 percent over the provider's actual cost or the provider's usual and customary charge, not to exceed \$5,745. Related diabetic supplies shall be reimbursed the lesser of 10 percent over the provider's actual cost or the provider's usual and customary charge.

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, Bureau of Health Services Financing, LR 30:1697 (August 2004), repromulgated LR 31:

## **Chapter 119. Hyperalimentation Therapy (Parenteral and Enteral)**

### **Subchapter A. Parenteral Nutrition Therapy**

#### **§11901. Description**

A. Parenteral Nutrition Therapy is the introduction of nutrients by some means other than through the gastrointestinal tract, in particular intravenous, subcutaneous, intramuscular, or intramedullary injection. Intravenous nutrition is also referred to as TPN (Total Parenteral Nutrition) or Hyperalimentation Therapy.

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 31:81 (January 2005), repromulgated LR 31:

#### **§11903. Medical Necessity Criteria**

A. Parenteral nutrition is covered for a patient with permanent, severe pathology of the alimentary tract which does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the patient's general condition.

B. Parenteral nutrition is covered in any of the following situations:

1. the patient has undergone recent (within the past three months) massive small bowel resection leaving less than or equal to 5 feet of small bowel beyond the ligament of Treitz; or

2. the patient has a short bowel syndrome that is severe enough that the patient has net gastrointestinal fluid and electrolyte malabsorption such that on an oral intake of 2.5-3 liters/day the enteral losses exceed 50 percent of the oral/enteral intake and the urine output is less than 1 liter/day; or

3. the patient requires bowel rest for at least three months and is receiving intravenously 20-35 cal/kg/day for treatment of symptomatic pancreatitis with/without pancreatic pseudocyst, severe exacerbation of regional enteritis, or a proximal enterocutaneous fistula where tube feeding distal to the fistula isn't possible; or

4. the patient has complete mechanical small bowel obstruction where surgery is not an option; or

5. the patient is significantly malnourished (10 percent weight loss over three months or less and serum albumin less than or equal to 3.4 gm/dl) and has very severe fat malabsorption (fecal fat exceeds 50 percent of oral/enteral intake on a diet of at least 50 gm of fat/day as measured by a standard 72 hour fecal fat test); or

6. the patient is significantly malnourished (10 percent weight loss over three months or less and serum albumin less than or equal to 3.4 gm/dl) and has a severe motility disturbance of the small intestine and/or stomach which is unresponsive to prokinetic medication (prokinetic medication is defined as the presence of daily symptoms of nausea and vomiting while taking maximal doses) and is demonstrated either:

a. scintigraphically (solid meal gastric emptying study demonstrates that the isotope fails to reach the right colon by six hours following ingestion); or

b. radiographically (barium or radiopaque pellets fail to reach the right colon by six hours following administration).

NOTE: These studies must be performed when the patient is not acutely ill and is not on any medication which would decrease bowel motility.

7. For criteria in §11903.B.1-6.b above, the conditions are deemed to be severe enough that the patient would not be able to maintain weight and strength on only oral intake or tube enteral nutrition.

C. Maintenance of weight and strength commensurate with the patient's overall health status must require intravenous nutrition and must not be possible utilizing all of the following approaches:

1. modifying the nutrient composition of the enteral diet (e.g., lactose free, gluten free, low in long chain triglycerides, substitution with medium chain triglycerides, provision of protein as peptides or amino acids, etc.); and

2. utilizing pharmacologic means to treat the etiology of the malabsorption (e.g., pancreatic enzymes or bile salts, broad spectrum antibiotics for bacterial overgrowth, prokinetic medication for reduced motility, etc.).

D. Patients who do not meet criteria in §11903.B above must meet criteria in §11903.C.1-2 above (modification of diet and pharmacologic intervention) plus:

1. the patient is malnourished (10 percent weight loss over three months or less and serum albumin less than or equal to 3.4 gm/dl); and

2. a disease and clinical condition has been documented as being present and it has not responded to altering the manner of delivery of appropriate nutrients (e.g., slow infusion of nutrients through a tube with the tip located in the stomach or jejunum).

E. The following are some examples of moderate abnormalities which would require a failed trial of tube enteral nutrition before parenteral nutrition would be covered:

1. moderate fat malabsorption - fecal fat exceeds 25 percent of oral/enteral intake on a diet of at least 50 gm fat/day as measured by a standard 72-hour fecal fat test;

2. diagnosis of malabsorption with objective confirmation by methods other than 72-hour fecal fat test (e.g., Sudan stain of stool, dxylose test, etc.);

3. gastroparesis which has been demonstrated:

a. radiographically or scintigraphically as described in §12103.B above with the isotope or pellets failing to reach the jejunum in three to six hours; or

b. by manometric motility studies with results consistent with an abnormal gastric emptying, and which is unresponsive to prokinetic medication;

4. a small bowel motility disturbance which is unresponsive to prokinetic medication, demonstrated with a gastric to right colon transit time between three to six hours;

5. small bowel resection leaving greater than 5 feet of small bowel beyond the ligament of Treitz;

6. short bowel syndrome which is not severe (as defined in §11903.B.);

7. mild to moderate exacerbation of regional enteritis, or an enterocutaneous fistula;

8. partial mechanical small bowel obstruction where surgery is not an option.

F. Documentation must support that a concerted effort has been made to place a tube. For gastroparesis, tube placement must be post-pylorus, preferably in the jejunum. Use of a double lumen tube should be considered. Placement of the tube in the jejunum must be objectively verified by radiographic studies or luoroscopy. Placement via endoscopy or open surgical procedure would also verify location of the tube.

G. A trial with enteral nutrition must be documented, with appropriate attention to dilution, rate, and alternative formulas to address side effects of diarrhea.

H. Parenteral nutrition can be covered in a patient with the ability to obtain partial nutrition from oral intake or a combination of oral/enteral (or oral/enteral/parenteral) intake as long as the following criteria are met:

1. a permanent condition of the alimentary tract is present which has been deemed to require parenteral therapy because of its severity;

2. a permanent condition of the alimentary tract is present which is unresponsive to standard medical management; and

3. the person is unable to maintain weight and strength.

I. If the coverage requirements for parenteral nutrition are met, medically necessary nutrients, administration supplies and equipment are covered. Parenteral nutrition solutions containing little or no amino acids and/or carbohydrates would be covered only in situations stated in §11903.B.1, 2, or 4 above.

J. Documentation Requirements

1. Patients covered under Paragraph B.4 should have documentation of the persistence of their condition. Patients covered under §11903.B.5-C.2 should have documentation that sufficient improvement of their underlying condition has not occurred which would permit discontinuation of parenteral nutrition. Coverage for these patients would be continued if the treatment has been effective as evidenced by an improvement of weight and/or serum albumin. If there has been no improvement, subsequent claims will be denied unless the physician clearly documents the medical necessity for continued parenteral nutrition and any changes to the therapeutic regimen that are planned, e.g., an increase in the quantity of parenteral nutrients provided.

2. A total caloric daily intake (parenteral, enteral and oral) of 20-35 cal/kg/day is considered sufficient to achieve or maintain appropriate body weight. The ordering physician must document in the medical record the medical necessity for a caloric intake outside this range in an individual patient.

3. Parenteral nutrition would usually be noncovered for patients who do not meet criteria in §11903.H, but will be considered on an individual case basis if detailed documentation is submitted.

4. Patients covered under criteria in §12103.B.1 or 2 should have documentation that adequate small bowel adaptation had not occurred which would permit tube enteral or oral feedings.

5. Patients covered under §11903.B.3 should have documentation of worsening of their underlying condition during attempts to resume oral feedings.

6. The ordering physician must document the medical necessity for protein orders outside of the range of 0.8-1.5 gm/kg/day, dextrose concentration less than 10 percent, or lipid use greater than 15 units of a 20 percent solution or 30 units of a 10 percent solution per month.

7. If the medical necessity for special parenteral formulas is not substantiated, authorization of payment will be denied.

**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 31:81 (January 2005), repromulgated LR 31:

#### **§11905. Exclusionary Criteria**

A. Parenteral nutrition will be denied as noncovered in situations involving temporary impairments. The patient must have:

1. a condition involving the small intestine and/or its exocrine glands which significantly impairs the absorption of nutrients;

2. disease of the stomach and/or intestine which is a motility disorder and impairs the ability of nutrients to be transported through the GI system. There must be objective evidence supporting the clinical diagnosis.

B. Parenteral nutrition is noncovered for the patient with a functioning gastrointestinal tract whose need for parenteral nutrition is only due to:

1. a swallowing disorder;

2. a temporary defect in gastric emptying such as a metabolic or electrolyte disorder;

3. a psychological disorder impairing food intake such as depression;

4. a metabolic disorder inducing anorexia such as cancer;

5. a physical disorder impairing food intake such as the dyspnea of severe pulmonary or cardiac disease;

6. a side effect of a medication; or

7. renal failure and/or dialysis.

**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 30:1032 (May 2004), amended LR 31:83 (January 2005), repromulgated LR 31:

#### **§11907. Prior Authorization**

A. Parenteral Nutrition Therapy may be approved by Prior Authorization Unit (PAU) at periodic intervals not to exceed six months. However, Medicaid will pay for no more than one month's supply of nutrients at any one time. All requests to the PAU shall include:

1. the prognosis, as well as the diagnosis;

2. the date the recipient was first infused;

3. whether the recipient has been trained to use parenteral equipment;

4. a statement that the recipient is capable of operating the parenteral equipment;

5. either the Medicaid certificate of medical necessity form for TPN, or the Medicare certificate of medical necessity form, Form DMERC 10.02A, completed and signed by the treating physician;

6. documentation showing that the patient has a permanent impairment. Permanence does not require a determination that there is no possibility that the patient's condition may improve sometime in the future. Medical documentation must substantiate that the condition is expected to last a long and indefinite duration (at least three months).

B. Additional documentation must be included with the initial request for parenteral nutrition.

1. In situations covered in §11903.E.1-4, the documentation should include copies of the operative report and/or hospital discharge summary and/or x-ray reports and/or a physician letter which document the condition and the necessity for parenteral therapy.

2. For situations in §11903.F.5 and E.2 (when appropriate), include the results of the fecal fat test and dates of the test.

3. For situations in §11903.F.6 and E.2, include a copy of the report of the small bowel motility study and a list of medications that the patient was on at the time of the test.

4. For situations in §11903.F.5-H.2, include results of serum albumin and date of test [within one week prior to initiation of parenteral nutrition (PN)] and a copy of a nutritional assessment by a physician, dietitian or other qualified professional within one week prior to initiation of PN, to include the following information:

a. current weight with date and weight one – three months prior to initiation of PN;

b. estimated daily calorie intake during the prior month and by what route (e.g., oral, tube);

c. statement of whether there were caloric losses from vomiting or diarrhea and whether these estimated losses are reflected in the calorie count;

d. description of any dietary modifications made or supplements tried during the prior month (e.g., low fat, extra medium chain triglycerides, etc.).

5. For situations described in §11903.E.2, include:

a. a statement from the physician;

b. copies of objective studies; and

c. excerpts of the medical record giving the following information:

i. specific etiology for the gastroparesis, small bowel dysmotility, or malabsorption;

ii. a detailed description of the trial of tube enteral nutrition including the beginning and ending dates of the trial, duration of time that the tube was in place, the type and size of tube, the location of tip of the tube, the name of the enteral nutrient, the quantity, concentration, and rate of administration, and the results;

iii. a copy of the x-ray report or procedure report documenting placement of the tube in the jejunum;

iv. prokinetic medications used, dosage, and dates of use;

v. nondietary treatment given during prior month directed at etiology of malabsorption (e.g., antibiotic for bacterial overgrowth);

vi. any medications used that might impair GI tolerance to enteral feedings (e.g., anticholinergics, opiates, tricyclics, phenothiazines, etc.) or that might interfere with test results (e.g., mineral oil, etc.) and a statement explaining the need for these medications.

6. Any other information which supports the medical necessity for parenteral nutrition may also be included.

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 31:83 (January 2005), repromulgated LR 31:

#### **§11909. Intradialytic Parenteral Nutrition**

A. Intradialytic Parenteral Nutrition Therapy (IDPN) is parenteral nutrition therapy provided to an end stage renal disease (ESRD) patient while the patient is being dialyzed.

B. In order to cover intradialytic parenteral nutrition (IDPN), documentation must be clear and precise to verify that the patient suffers from a permanently impaired gastrointestinal tract and that there is insufficient absorption of nutrients to maintain adequate strength and weight. The supporting documentation must substantiate that the patient cannot be maintained on oral or enteral feedings and that due to severe pathology of the alimentary tract, the patient must be intravenously infused with nutrients.

C. Infusions must be vital to the nutritional stability of the patient and not supplemental to a deficient diet or deficiencies caused by dialysis. Physical signs, symptoms and test results indicating severe pathology of the alimentary tract must be clearly evident in any documentation submitted. Patients receiving IDPN must also meet the criteria for parenteral nutrition.

D. If the coverage requirements for parenteral nutrition are met, one supply kit and one administration kit will be covered for each day that parenteral nutrition is administered, if such kits are medically necessary and used.

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 31:84 (January 2005), repromulgated LR 31:

#### **§11911. Additional Documentation Requirements**

A. For the initial request and for revised requests or reconsiderations involving a change in the order, there must be additional documentation to support the medical necessity of the following orders, if applicable.

1. the need for special nutrients;

2. the need for dextrose concentration less than 10 percent;

3. the need for lipids more than 15 units of a 20 percent solution or 30 units of a 10 percent solution per month.

B. After the first six months, the PA request must include a physician's statement describing the continued need for parenteral nutrition. For situations in §11903.B.5-6.b and §11903.E-E.2, the PA request must include the results of the most recent serum albumin (within two weeks of the request date) and the patient's most recent weight with the date of each. If the results indicate malnutrition, there should be a physician's statement describing the continued need for parenteral nutrition and any changes to the therapeutic regimen that are planned.

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 31:84 (January 2005), repromulgated LR 31:

#### **§11913. Equipment and Supplies**

A. Infusion pumps are covered for patients for whom parenteral nutrition is covered. Only one pump (stationary or portable) will be covered at any one time. Additional pumps will be denied as not medically necessary.

B. An IV pole is a device to suspend fluid to be administered by gravity or pump. An IV pole will be covered when a patient is receiving enteral or parenteral fluids and the patient is not using an ambulatory infusion pump.

C. Parenteral pumps are used to deliver nutritional requirements intravenously. Parenteral pumps are covered for parenteral nutrition for those patients who cannot absorb nutrients by the gastrointestinal tract.

D. Infusion pumps, ambulatory and stationary, are indicated for the administrative of parenteral medication in the home when parenteral administrative of the medication in the home is reasonable and medically necessary, and an infusion pump is necessary to safely administer the medication.

E. An external ambulatory infusion pump is a small portable electrical device that is used to deliver parenteral medication. It is designed to be carried or worn by the patient.

F. A stationary infusion pump is an electrical device, which serves the same purpose as an ambulatory pump, but is larger and typically mounted on a pole.

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 31:84 (January 2005), repromulgated LR 31:

#### **Chapter 121. IV Therapy and Administrative Supplies**

##### **§§12101-12105. Reserved.**

##### **§12107. Reimbursement**

A. Reimbursement is set at 70 percent of the Medicare fee schedule amount or the amount of billed charges, whichever is the lesser amount for the following HCPC procedure codes.

E0781, K0455, E0791	External Ambulatory Infusion Pumps
E0776	Infusion Pump IV Pole

1. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

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 30:1032 (May 2004), repromulgated LR 31:

### Chapter 123. Osteogenic Bone Growth Stimulators

#### §12301. General Provisions

A. Osteogenic bone growth stimulators are used to augment bone repair associated with either a healing fracture or bone fusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 30:1032 (May 2004), repromulgated LR 31:

#### §12303. Reserved.

#### §12305. Nonspinal Noninvasive Electrical

A. Nonspinal noninvasive electrical bone growth stimulators may be considered under the following circumstances:

1. the failure of long bone fractures to heal. A period of six months from the initial date of treatment must elapse before failure is considered to have occurred;

2. the failure of long bone fusions (period of nine months from the initial date of treatment must elapse before failure is considered to have occurred); or

3. the treatment of congenital pseudoarthroses. There is no minimal time requirement after the diagnosis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 30:1032 (May 2004), repromulgated LR 31:

#### §12307. Medical Necessity

A. Nonspinal Noninvasive Electrical. Spinal noninvasive electrical bone growth stimulators may be considered:

1. when a minimum of nine months has elapsed since the patient had fusion surgery which resulted in a failed spinal fusion; or

2. when there is a history of a previously failed spinal fusion at the same site following spinal fusion surgery (meaning more than nine months has elapsed since fusion surgery was performed at the same level which is being fused again). As long as nine months has passed since the failed fusion surgery, this repeated fusion attempt requires no minimum passage of time for the application of the device; or

3. following a multi-level spinal fusion (i.e., involving three or more contiguous vertebrae, such as L3-L5 of L4-S1). There is no minimum requirement for application after surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 30:1032 (May 2004), repromulgated LR 31:

#### §12309. Reimbursement

A. Medicaid coverage is limited to reimbursement for electrical, noninvasive types of bone growth stimulators only. Medicaid will not provide reimbursement for ultrasonic or invasive types of bone growth stimulators.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 30:1032 (May 2004), repromulgated LR 31:

### Chapter 125. Ostomy and Urological Supplies

#### Subchapter A. Ostomy Supplies

##### §12501. Description

A. Ostomy equipment (bags, supplies, cement, lubricant, solvents, and tincture of Benzoin) are considered only if prescribed for clients with ostomies. Diapers or disposable diapers shall not be considered as ostomy equipment and supplies covered by Medical Assistance Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 440.120(c).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 30:1033 (May 2004), repromulgated LR 31:

##### §12503. Reserved.

##### §12505. Reimbursement

A. Reimbursement for ostomy and urological supplies is 80 percent of the Medicare fee schedule, 80 percent of the manufacturer's suggested retail price (MSRP), or billed charges, whichever is the lesser amount, for HCPC codes:

A4331CA5123  
K0567CK0595

B. If an item is not available at 80 percent of the Medicare fee schedule amount or 80 percent of the MSRP amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

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 30:1033 (May 2004), repromulgated LR 31:

#### Subchapter B. Urological Supplies

##### §§12515 - 12529. Reserved.

##### §12531. Reimbursement

A. Reimbursement is 70 percent of the manufacturer's retail price (MSRP) amount, or billed charges, whichever is the lesser amount, for HCPC codes A4320 – A4351.

1. If an item is not available at 70 percent of the Medicare fee schedule amount or 70 percent of the MSRP amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

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 30:1033 (May 2004), repromulgated LR 31:

**§12533. Indwelling Catheters and Catheter Trays**

A. The following governs the coverage and reimbursement of indwelling catheters and catheter trays.

Description	Fee
Catheter and Catheter Tray	\$11.19
Catheter Tray	\$ 4.05
Catheter	\$ 7.14

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 30:1033 (May 2004), repromulgated LR 31:

**Chapter 127. Traction Equipment**

**§§12701. Reserved.**

**§12703. Reimbursement**

A. Reimbursement for traction equipment is 70 percent of the Medicare fee schedule amount of billed charges, whichever is the lesser amount for HCPC procedure codes E-0840 - E-0948.

1. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

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 30:1033 (May 2004), repromulgated LR 31:

**Chapter 129. Skin Care and Infection Control**

**Subchapter A. Wound and Surgical Dressings or**

**Bandages**

**§§12901 - 12905. Reserved.**

**§12907. Reimbursement**

A. Wound care supplies and dressings, and other medically necessary supply items exclusively designated for home health care are reimbursable under the Durable Medical Equipment Program, and are not reimbursable under the Home Health Program. Durable medical equipment providers must obtain prior authorization through the prior authorization process required under the Durable Medical Equipment Program in order to provide and be reimbursed for these home health care supplies. These supplies must be used by home health agencies in the home.

1. Diapers and blue pads are not reimbursable supply items under the Durable Medical Equipment Program.

B. Reimbursement is 70 percent of the Medicare fee schedule, or 70 percent of the Manufacturer's Suggested Retail Price (MSRP) amount, or billed charges, whichever is the lesser amount, for HCPC Codes A4244 - K0413.

1. If an item is not available at 70 percent of the Medicare fee schedule amount or 70 percent of the MSRP amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available

by analyzing usual and customary fees charged in the community.

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 30:1033 (May 2004), repromulgated LR 31:

**Subchapter B. Negative Pressure Wound Therapy**

**§12911. Definitions**

*Lack of Improvement of a Wound* (as used within this Subchapter B) means a lack of progress in quantitative measurements of wound characteristics including wound length and width (surface area), or depth measured serially and documented over a specified time interval. Wound healing is defined as improvement occurring in either surface area or depth of the wound.

*Licensed Health Care Professional* (for the purposes of this Subchapter B) may be a physician, registered nurse (RN), or physical therapist (PT). The practitioner must be licensed to assess wounds and/or administer wound care.

*Negative Pressure Wound Therapy (NPWT)* is the controlled application of sub-atmospheric pressure to a wound using an electrical pump to intermittently or continuously convey sub-atmospheric pressure through connecting tubing to a specialized wound dressing which includes a resilient, open-cell foam surface dressing, sealed with an occlusive dressing that is meant to contain the sub-atmospheric pressure at the wound site and thereby promote wound healing. Drainage from the wound is collected in a canister.

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 30:1481 (July 2004), repromulgated LR 31:

**§12913. Covered Services**

A. Equipment and supplies used in negative pressure wound therapy include:

1. a stationary or portable NPWT electrical pump;
2. a dressing set; and
3. a canister set.

B. The stationary or portable NPWT electrical pump provides controlled sub-atmospheric pressure that is designed for use with NPWT dressings to promote wound healing. Such a NPWT pump is capable of being selectively switched between continuous and intermittent modes of operation and is controllable to adjust the degree of sub-atmospheric pressure conveyed to the wound in a range from 25 to greater than 25 mm Hg sub-atmospheric pressure. The pump is capable of sounding an audible alarm when desired pressures are not being achieved such as where there is a leak in the dressing seal, and when the wound drainage canister is full. The pump is designed to fill the canister to full capacity.

C. The dressing set used in conjunction with a stationary or portable NPWT pump must contain all necessary components including, but not limited to, a resilient, open-cell foam surface dressing, drainage tubing, and an occlusive dressing which creates a seal around the wound site for maintaining sub-atmospheric pressure at the wound.

D. The canister set used in conjunction with a stationary or portable NPWT pump must contain all necessary

components, including, but not limited to, a container to collect wound exudates. Canisters may be various sizes to accommodate stationary or portable NPWT pumps.

**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 30:1481 (July 2004), repromulgated LR 31:

#### **§12915. Medical Necessity Criteria**

A. Negative wound pressure therapy is considered to be medically necessary when the following criteria are met.

1. Treatment of Ulcers and Wounds in the Home Setting. The patient has a chronic Stage III or IV pressure ulcer, neuropathic (such as diabetic) ulcer, venous or arterial insufficiency ulcer, or a chronic (being present for at least 30 days) ulcer of mixed etiology. A complete wound therapy program described by the criterion in Subparagraph a and criteria set forth in Subparagraphs b, c, or d, as applicable depending on the type of wound, must have been addressed, applied, or considered and ruled out prior to application of NPWT.

a. For all ulcers or wounds, the following components of a wound therapy program must include a minimum of all of the following general measures, which should either be addressed, applied, or considered and ruled out prior to the application of NPWT:

i. documentation in the patient's medical record of evaluation, care and wound measurements by a licensed medical professional; and

ii. application of dressings to maintain a moist wound environment; and

iii. debridement of necrotic tissue, if present; and

iv. evaluation of and provisions for adequate nutritional status.

b. For Stage III or IV pressure ulcers:

i. the patient has been appropriately turned and positioned; and

ii. the patient has used a group 2 or 3 support surface for pressure ulcers on the posterior trunk or pelvis (a group 2 or 3 support surface is not required if the ulcer is not on the trunk or pelvis); and

iii. the patient's moisture and incontinence have been appropriately managed.

c. For neuropathic (for example, diabetic) ulcers:

i. the patient has been on a comprehensive diabetic management program; and

ii. reduction in pressure on a foot ulcer has been accomplished with appropriate modalities.

d. For venous insufficiency ulcers:

i. compression bandages and/or garments have been consistently applied; and

ii. leg elevation and ambulation have been encouraged.

**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 30:1482 (July 2004), repromulgated LR 31:

#### **§12917. Continued Coverage**

A. For wounds and ulcers described in §12915, in order to continue coverage of an NPWT pump and supplies, a licensed medical professional must comply with the following requirements:

1. on a regular basis:

a. directly assess the wound(s) being treated with the NPWT pump; and

b. supervise or directly perform the NPWT dressing changes; and

2. on at least a monthly basis, document changes in the ulcer's dimensions and characteristics.

B. Coverage of NPWT will be discontinued after three months if there is a lack of improvement of the wound(s).

**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 30:1482 (July 2004), repromulgated LR 31:

#### **§12919. Coverage Exclusions**

A. A negative pressure wound therapy pump and supplies will be denied as not medically necessary if one or more of the following conditions are present:

1. the presence in the wound of necrotic tissue with eschar, if debridement is not attempted;

2. untreated osteomyelitis within the vicinity of the wound;

3. cancer is present in the wound; or

4. the presence of a fistula to an organ or body cavity within the vicinity of the wound.

**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 30:1482 (July 2004), repromulgated LR 31:

#### **§12921. Provider Responsibilities**

A. Documentation Requirements

1. A written order for the negative pressure wound therapy pump and supplies shall be signed and dated by the treating physician and submitted with the prior authorization request. The order shall include the type of supplies ordered and the approximate quantity to be used per unit of time.

2. Documentation of the history, previous treatment regimens, and current wound management for which a NPWT pump is being billed shall be submitted with the prior authorization request. This documentation shall include such elements as length of sessions of use, dressing types and frequency of change, and changes in wound conditions, including:

a. precise measurements;

b. quantity of exudates;

c. presence of granulation and necrotic tissue; and

d. concurrent measures being addressed relevant to wound therapy (debridement, nutritional concerns, support surfaces in use, positioning, incontinence control, etc.).

3. Documentation shall indicate regular evaluation and treatment of the patient's wounds. Documentation of quantitative measurements of wound characteristics including wound length and width (surface area), and depth, and amount of wound exudates (drainage), indicating progress of healing shall be entered at least monthly. The supplier of the NPWT equipment and supplies shall obtain an assessment of wound healing progress, based upon the wound measurement as documented in the patient's medical record from the treating clinician, and submit to the prior authorization unit in order for a determination to be made as to whether the equipment and supplies continue to qualify for Medicaid coverage.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1482 (July 2004), repromulgated LR 31: §12923. Reimbursement

A. The Health Care Common Procedure Coding System shall be used to bill for negative pressure wound therapy equipment and supplies. Only the products referred to in this Subchapter B are reimbursable by Medicaid. These products shall meet approved Medicare guidelines and codes. Claims for negative pressure wound therapy equipment and supplies shall be reimbursed at 80 percent of the 2004 Medicare DMEPOS fee schedule for Louisiana.

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 30:1483 (July 2004), repromulgated LR 31:

#### 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.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, May 24, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Home Health Program

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 04-05. It is anticipated that \$7,208 (\$3,604 SGF and \$3,604 FED) will be expended in FY 04-05 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 04-05. It is anticipated that \$3,604 will be expended in FY 04-05 for the federal share of the expense for promulgation of this proposed rule and the final rule.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to repromulgate the criteria for home health services to include provisions for equipment, supplies and appliances formerly in the Durable Medical Equipment Program (Places home health in the proper section of the administrative code). It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for FY 05-06, FY 06-07 and FY 07-08.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Ben A. Bearden  
Director  
0504#070

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

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

#### Pharmacy Benefits Management Program Reimbursement Methodology

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers the Pharmacy Benefits Management Program under the Medicaid Program in accordance with federal and state regulations which govern Medicaid coverage of prescription drugs. In 1990, Congress created the Medicaid Rebate Program to lower the cost of pharmaceuticals reimbursed by state Medicaid programs. The program required drug companies to pay rebates as a precondition to having their drugs covered by Medicaid. As a result of the Medicaid rebate law, many drug companies increased the prices of their products to offset the Medicaid discounts. Other federally and state-supported providers' drug expense increased significantly because of the companies' changes in pricing strategies and eventually offset any savings realized as part of the Medicaid rebate law.

In order to remedy this situation, Congress enacted the Veterans Health Care Act of 1992. Section 602 of that Act added Section 340B to the Public Health Service Act requiring drug companies whose drugs are covered by the Medicaid Program to provide discounts on covered drugs purchased by certain government-supported facilities and/or entities. In order to become eligible to participate in the 340B Program, a facility must submit a request to the Office of Pharmacy Affairs within the Health Resources and Services Administration (HRSA), Department of Health and Human Services. In compliance with the Veterans Health



Care Act of 1992, the bureau proposes to implement a new reimbursement methodology for entities billing Louisiana Medicaid for self-administered drugs purchased through the 340B Program and dispensed to eligible 340B patients.

### **Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions under the Medicaid Pharmacy Benefits Management Program.

#### **A. Definitions**

**Actual Acquisition Cost**—The covered entity's net payment made to purchase a drug product, after taking into account such items as purchasing allowances, discounts, wholesaler fees and rebates.

**Contract Pharmacy**—A pharmacy under contract with a covered entity that lacks its own pharmacy whereby the contract pharmacy is authorized to dispense 340B-discounted drugs on behalf of the covered entity in accordance with 1996 Health Resources and Services Administration (HRSA) guidelines (*61 FR 43549, August 23, 1996*). Contract pharmacies may also serve as billing agents for covered entities.

**Covered Entity**—A provider or program that meets the eligibility criteria for participating in the 340B Program as set forth in Section 340B(a)(4) of the Public Health Service Act. Covered entities include eligible disproportionate share hospitals that are owned by or under contract with state or local government, community health centers, migrant health centers, health centers for public housing, health centers for the homeless, AIDS drug assistance programs and other AIDS clinics and programs, black lung clinics, hemophilia treatment centers, native Hawaiian health centers, urban Indian clinics/638 tribal centers, 340s school-based programs, Title X family planning clinics, sexually-transmitted disease clinics, and tuberculosis clinics.

**Dispensing Fee**—The fee paid by Medicaid for the professional services provided by a pharmacist when dispensing a prescription, including the \$0.10 provider fee assessed for each prescription filled in the state of Louisiana per legislative mandate.

**Medicaid Carve-Out**—A billing mechanism available to covered entities that implements the 340B requirement protecting manufacturers from giving a 340B discount and paying a Medicaid rebate on the same drug. If a covered entity elects to implement the Medicaid carve-out option, the covered entity only purchases through the 340B Program covered drugs dispensed to non-Medicaid patients; drugs dispensed to Medicaid patients are purchased outside the 340B Program.

**Patient**—An individual eligible to receive 340B-discounted drugs from a covered entity by virtue of being the covered entity's patient as defined in HRSA's 1996 patient definition guideline (*61 FR 55156, October 24, 1996*).

**340B Program**—The federal drug discount program established under Section 340B of the Public Health Service Act and administered by the Office of Pharmacy Affairs within HRSA.

#### **B. Reimbursement**

1. Self-administered drugs that are purchased by a covered entity through the 340B Program and dispensed to patients who are covered by Medicaid shall be billed to

Medicaid at actual acquisition cost unless the covered entity has implemented the Medicaid carve-out option, in which case such drugs shall be billed in accordance with existing state Medicaid reimbursement methodologies.

2. **Contract Pharmacies.** In the event that the covered entity has entered into a contract pharmacy arrangement and the contract pharmacy serves as the covered entity's billing agent, the contract pharmacy shall bill Medicaid at actual acquisition cost under the covered entity's Medicaid pharmacy billing number, unless the covered entity has implemented the Medicaid carve-out option, in which case such drugs shall be billed in accordance with existing state Medicaid reimbursement methodologies under the contract pharmacy's Medicaid pharmacy billing number.

3. **Dispensing Fees.** The covered entity shall be paid a dispensing fee of \$8.10 for each prescription dispensed to a Medicaid patient, unless the covered entity has implemented the carve-out option, in which case the covered entity shall be paid the state's existing non-340B dispensing fee. With respect to contract pharmacy arrangements in which the contract pharmacy also serves as the covered entity's billing agent, the contract pharmacy shall be paid the \$8.10 dispensing fee on behalf of the covered entity, unless the covered entity elects the Medicaid carve-out, in which case the contract pharmacy shall be paid the state's existing non-340B dispensing fee.

Implementation 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.

### **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 would have a positive impact on family functioning as described in R.S. 49:972 in that these 340B drugs would be available to populations other than the Medicaid population.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, May 24, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, 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: Pharmacy Benefits Management Program Reimbursement Methodology**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will result in an estimated cost avoidance to the state of \$914,537 for FY 05-06, and \$1,000,326 for FY 06-07. It is

anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in FY 04-05 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 implementation of this proposed rule will reduce federal revenue collections by \$2,144,116 for FY 05-06, and \$2,345,245 for FY 06-07. \$204 is included in FY 04-05 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 implements a new reimbursement methodology for entities billing Louisiana Medicaid for self-administered drugs purchased through the 340B Program, which is set forth in the Public Health Service Act requiring drug companies whose drugs are covered by the Medicaid Program to provide discounts on covered drugs purchased by certain government-supported facilities and/or entities and dispensed to eligible 340B patients (approximate 4,000 recipients). It is anticipated that implementation of this proposed rule will decrease payments for 340B drugs by \$3,058,653 for FY 05-06, and \$3,345,571 for FY 06-07.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that there will be no effect on competition and employment as a result of the implementation of this proposed rule.

Ben A. Bearden  
Director  
0504#071

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Prosthetics and Orthotics  
(LAC 50:XVII.Chapters 1, 3, 5, 15, 17, 19, 101, and 103)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to repeal and repromulgate LAC 50:Part XVII 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 promulgated a Rule to adopt the provisions governing durable medical equipment, supplies, appliances, and prosthetics under the Durable Medical Equipment Program (*Louisiana Register*, Volume 30, Number 5). In compliance with guidelines established by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the bureau is repealing the provisions governing durable medical equipment, supplies and appliances in LAC 50:XVII and repromulgating these provisions in LAC 50:XIII under the Home Health Program in a separate Notice of Intent. The bureau now proposes to repeal and repromulgate the provisions governing prosthetics in LAC 50:XVII.Chapters 1 and 3.

**Title 50**

**PUBLIC HEALTH MEDICAL ASSISTANCE**

**Part XVII. Prosthetics and Orthotics**

**Subpart 1. General Provisions**

**Chapter 1. Prior Authorization**

**§101. Purchase and Repairs**

A. Prior authorization is required before payment can be issued for the purchase or repair of prosthetics and orthotics.

B. Prior authorization is performed by the Medicaid fiscal intermediary under contractual arrangement with the Bureau of Health Services Financing and is the responsibility of the Prior Authorization Unit (PAU).

C. Every prior authorization request shall contain:

1. medical information from a physician, including:
  - a. a written prescription from a licensed physician or a physician's order form signed by the prescribing physician;
  - b. the diagnosis related to the request; and
  - c. other medical information to support the need for the requested item, including documentation that the medical criteria specific to the requested items are met;
2. if pertinent, a statement from the prescribing physician or appropriate licensed rehabilitation therapist as to whether the recipient's age and circumstances indicate that he can adapt to or be trained to use the item effectively; and
3. any other pertinent information, such as measurements to assure correct size of the prosthetic or orthotic item.

D. Emergency Requests. Emergency requests for prior authorization decisions may be considered for prosthetics or orthotics requested during hospitalization of a recipient which is medically necessary for hospital discharge and is to be furnished for use in an outpatient setting.

E. Requests for Repairs, Modification, or Additional Components to Equipment

1. Requests for basic repairs to a prosthetic or orthotic item shall contain medical information from a physician that is required for purchase of the item.
2. Requests for repairs or replacements of original equipment components or parts that were previously approved for purchase by Medicaid do not require a submittal of a new prescription or medical information unless the provider does not have the following identified information:

- a. a copy of the original request for approval;
- b. the original prior authorization number; or
- c. a copy of the original prescription.

F. If one or more of these items are available, the provider may submit the prior authorization request with the original prescribing physician's name, prescription date, and diagnosis codes. The original approval date or prior authorization number shall be noted on the request form or a copy of the original prescription attached.

G. If these items are not available, a new request with all required information must be submitted for approval.

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 31:85 (January 2005), repromulgated LR 31:

### Chapter 3. Provider Participation

#### §301. Provider Responsibilities

A. Providers may not deliver more than one month's approval of supplies initially and all subsequently approved supplies must be delivered in increments not to exceed one month's rations.

B. The recipient must be Medicaid eligible on the date of service for payment to be made. The date of service is the date of delivery.

C. The date of shipping will be considered the date of service for all items delivered through mail courier service.

D. Providers who make or sell prosthetic or orthotic items must provide a warranty which lasts at least one year from the time the item is delivered to the customer. If, during that year, the item does not work, the manufacturer or dealer must repair or replace the item.

E. For any appliance which requires skill and knowledge to use, the item provider must provide appropriate training for the recipient and must provide documentation of plans for training upon the request of the prior authorization unit.

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 31:85 (January 2005), repromulgated LR 31:

### Chapter 5. Reimbursement

#### §501. Reimbursement Methodology

A. Reimbursement is 70 percent of the Medicare Fee Schedule amount or billed charges, whichever is the lesser amount, unless otherwise stipulated. If an item is not available at 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

B. Jobst stockings are reimbursed at 80 percent of the Medicare fee schedule.

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:

#### §503. Medicare Part B Claims

A. The Medicare payment to the Medicaid rate on file is compared to the Medicare Part B claims for the prosthetic or orthotic item. If the Medicare payment exceeds the Medicaid rate, the claim is adjudicated as a paid claim with a zero payment. If the Medicaid rate exceeds the Medicare payment, the claim is reimbursed at the lesser of the co-insurance and deductible or up to the Medicaid maximum payment.

B. If the Medicaid payment is reduced or eliminated as a result of the Medicare/Medicaid payment comparison, the amount of the Medicare payment plus the amount of the Medicaid payment (if any) shall be considered to be payment in full for the service. The recipient does not have any legal liability to make payment for the 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 30:1027 (May 2004), repromulgated LR 31:

### Subpart 3. Prothhetic Devices

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

##### §1501. Introduction

###### A. Definitions

*Artificial Eye or Ocular Prosthesis* **C**a replacement for a missing or damaged, unsightly eye.

*Full Ocular Prosthesis* **C**used for individuals who have the globe removed allowing for the fitting of a regular artificial eye.

*Related Services* **C**include polishing or resurfacing of ocular prosthetics, enlargements or reductions of ocular prosthetics, and fabrication or fitting of ocular conformer.

###### *Scleral Shell (or Shield)* **C**

a. a custom-made, thin ocular prosthesis fitted directly over a blind and shrunken globe. It includes the iris (the colored part of the eye) and the sclera (the white part of the eye);

b. a term utilized to describe different types of hard scleral contact lenses. A shell fits over the entire exposed surface of the eye as opposed to a corneal contact lens which covers only the central nonwhite area encompassing the pupil and iris.

B. These procedures require prior authorization.

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 30:2830 (December 2004), repromulgated LR 31:

##### §1503. Medical Necessity

A. An artificial eye and related services shall be approved if an eyeball is removed and replacement and repair and/or upkeep of an artificial eye are necessary to maintain the contour of the face.

B. A scleral shell may be authorized when the medical criteria as stated in this Subchapter A are met. A scleral shell may, among other things, obviate the need for surgical enucleation and prosthetic implant and act to support the surrounding orbital tissue of an eye that has been rendered sightless and shrunken by inflammatory disease. In such a case, the device serves essentially as an artificial eye. In this situation, authorization of payment may be made for a scleral shell. Scleral shells are occasionally used in combination with artificial tears in the treatment of "dry eye" of diverse etiology. Tears ordinarily dry at a rapid rate, and are continually replaced by the lacrimal gland. When the lacrimal gland fails, the half-life of artificial tears may be greatly prolonged by the use of the scleral contact lens as a protective barrier against the drying action of the atmosphere. Thus, the difficult and sometimes hazardous process of frequent installation of artificial tears may be avoided. The lens acts in this instance to substitute, in part, for the functioning of the diseased lacrimal gland and may be covered as a prosthetic device in the rare case when it is used in the treatment of "dry eye."

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 30:2830 (December 2004), repromulgated LR 31:

#### **§1505. Reimbursement**

A. Reimbursement for artificial eyes, scleral shells, and the related services shall be at 90 percent of the 2004 Medicare fee schedule or billed charges; whichever is the lesser amount. If not available at the established flat fee, the flat fee that shall be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

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 30:1030 (May 2004), amended LR 30:2830 (December 2004), repromulgated LR 31:

#### **Chapter 17. Breast or Mammary Prostheses**

##### **§1701-1705. Reserved**

##### **§1707. Reimbursement**

A. Reimbursement for breast prosthesis is 70 percent of the Medicare fee schedule amount or the amount of billed charges.

B. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 30:1030 (May 2004), repromulgated LR 31:

#### **Chapter 19. Support and Surgical Stockings**

##### **§1901-1905. Reserved**

##### **§1907. Reimbursement**

A. Reimbursement for elastic support stockings is 70 percent of the Medicare fee schedule amount or the amount of billed charges, whichever is the lesser amount.

B. If an item is not available at the rate of 70 percent of the Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community for the HCPC procedure code.

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 30:1030 (May 2004), repromulgated LR 31:

#### **Subpart 5. Orthotic Devices**

#### **Chapter 101. General Provisions**

##### **§10101-10115. Reserved**

##### **§10117. Reimbursement**

A. Reimbursement is 70 percent of the Medicare fee schedule amount or billed charges, whichever is the lesser amount.

B. If an item is not available at 70 percent of the Medicare fee schedule amount, the flat fee that will be

utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

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:

#### **Chapter 103. Orthopedic Shoes and Corrections**

##### **§10301-10305. Reserved**

##### **§10307. Orthopedic Shoes**

A. Orthopedic shoes and corrections are approved only when the shoes are attached to braces or are needed to protect gains from surgery or casting. Payment will not be made for:

1. metatarsus adductus; or
2. internal tibial torsion.

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 30:1030 (May 2004), repromulgated LR 31:

#### **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.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, May 24, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, 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: Prosthetics and Orthotics**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 04-05. It is anticipated that \$952 (\$476 SGF and \$476 FED) will be expended in FY 04-05 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 04-05. It is anticipated that \$476 will be expended in FY 04-05 for the

federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to repeal some provisions contained in the Durable Medical Equipment Program in Chapter XVII (Places prosthetic in the proper section of the administrative code). These provisions will be repromulgated under the Home Health Program. This proposed rule also repromulgates provisions for prosthetics previously contained in Chapter 13. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for FY 05-06, FY 06-07 and FY 07-08.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Ben A. Bearden  
Director  
0504#072

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

Statewide Order 2-B Hours for Receiving Waste  
(LAC 43:XIX.537)

The Louisiana Office of Conservation proposes to amend LAC 43:XIX.Chapter 5 (Statewide Order No. 29-B) in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq., and pursuant to power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Sections 30:4 et seq. The proposed amendment modifies the specific provision at LAC 43:XIX.537.A which establishes the hours whereby commercial exploration and production waste disposal facility and transfer stations may receive waste.

The amendment to the above existing Rule will establish uniformly consistent hours by which commercial exploration and production waste disposal facilities and transfer stations may receive waste by removing all reference to the current daylight hour, sunrise to sunset table. If adopted, operators of such facilities will be allowed to receive waste between the fixed hours of 6 a.m. and 9 p.m., Central Time Zone.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation General Operations**

**Subpart 1. Statewide Order No. 29-B**

**Chapter 5. Off-Site Storage, Treatment and/or  
Disposal of Exploration and Production  
Waste Generated from Drilling and  
Production of Oil and Gas Wells**

**§537. Hours of Receiving**

A. Commercial facilities and transfer stations shall be adequately manned during hours of receiving and shall receive E&P Waste by truck only between the hours of 6 a.m. and 9 p.m., Central Time, except as provided in §537.B. below.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1910 (November 2001), amended LR 31:

**Family Impact Statement**

In accordance with R.S. 49:971, the following statements are submitted after consideration of the impact of the proposed Rule amendment at LAC 43:XIX.537.A on family as defined therein.

1. The proposed Rule amendment will have no effect on the stability of the family.

2. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule amendment will have no effect on the functioning of the family.

4. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The proposed Rule amendment will have no effect on the behavior and personal responsibility of children.

6. Family or local government are not required to perform any function contained in the proposed Rule amendment.

The Commissioner of Conservation will conduct a public hearing at 10 am, Thursday, May 26, 2005, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., Thursday, June 2, 2005, at Office of Conservation, Injection and Mining Division, PO Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Injection and Mining Division, 617 North Third St., Room 817, Baton Rouge, LA 70802. Reference Docket No. IMD 2005-02 on all correspondence.

James H. Welsh  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Hours for Receiving Waste (No. 29-B)**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No additional implementation costs (savings) to State or Local governments units are anticipated to implement the proposed rule amendment.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No costs and/or economic benefits are anticipated to directly affected persons or non-governmental groups. The proposed rule amendment will standardize the hours that commercial Exploration and Production Waste disposal facilities and transfer stations may receive waste.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There will be no effect on competition and employment.

James H. Welsh  
Commissioner  
0504#032

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Board of Private Security Examiners**

Licensure and Training  
(LAC 46:LIX.201, 203, 301, 405, 409, and 813)

Under the authority of the Private Security Regulatory and Licensing Law, R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the executive secretary gives notice that rulemaking procedures have been initiated to amend the Louisiana State Board of Private Security Examiners regulations, LAC 46:LIX:201, 203, 301, 405, 409, and 813, as follows.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIX. Private Security Examiners**

**Chapter 2. Company Licensure**

**§201. Qualifications and Requirements for Company  
Licensure**

A. - E.7. ...

8. licensing, application and examination fees prescribed by law, and the appropriate fingerprint processing fee.

F. - L.1. ...

2. To renew a company license, licensee must submit the annual renewal fee prescribed by law to the board 30 days prior to the expiration date of license. If there have been any changes in the status of the company, then a new company application must also be submitted, along with the application fee prescribed by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:847 (October 1989), LR 18:190 (February 1992), LR 23:588 (May 1997), LR 26:1068 (May 2000), LR 28:96 (January 2002), LR 28:2203 (October 2002), LR 31:

**§203. Application Procedure**

A. - H. ...

I. Renewal Provisions. The annual renewal fee prescribed by law must be submitted to the board 30 days prior to the expiration date of the license. If there have been any changes in the status of the company, then a new company application must also be submitted, along with the application fee prescribed by law.

J. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:12

(January 1989), LR 15:847 (October 1989), LR 26:1070 (May 2000), LR 28:97 (January 2002), LR 28:2203 (October 2003), LR 31:

**Chapter 3. Security Officer Registration**  
**§301. Qualifications and Requirements for Security  
Officer Registration**

A. - K.6. ...

L. Reinstatement

1. A registrant who terminates employment from a licensee and is rehired within 60 calendar days by the same licensee may be reinstated by licensee submitting, in writing, a request to have registrant reinstated, accompanied by the reinstatement fee prescribed by law.

L.2 - N.3. ...

O. Status Change

1. A registrant's status may be changed from unarmed to armed, or vice versa, by submitting a letter to the board requesting a status change with the status change fee prescribed by law.

O.2 - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:753 (December 1987), amended LR 15:12 (January 1989), LR 15:848 (October 1989), LR 18:191 (February 1992), LR 23:588 (May 1997), LR 26:1072 (May 2000), LR 27:1241 (August 2001), LR 28:2204 (October 2002), LR 31:

**Chapter 4. Training**

**§405. Firearms Training**

A. - J.1. ...

2. Security officer shall qualify with a semiautomatic rifle by firing the 100-yard course of fire specified by the National Rifle Association or a nationally recognized equivalent course of fire approved by the board, which course of fire may be reduced to 24 rounds using the accumulated totals to simulate 100 yards. Qualifying score shall be an accumulated total of 80 percent of the maximum obtainable score.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:755 (December 1987), amended LR 15:13 (January 1989), LR 15:850 (October 1989), LR 18:192 (February 1992), LR 23:588 (May 1997), LR 26:1073 (May 2000), LR 27:1241 (August 2001), LR 28:2204 (October 2002), LR 31:

**§409. Instructor Requirements, Responsibilities and  
Liability**

A. The board shall collect the instructor fees prescribed in R.S. 37:3286.

B. - F. ...

G. License Transfer

1. An instructor may transfer his license to another company by submitting to the board a transfer application, the transfer fee prescribed by law, and proof of general liability insurance coverage.

2. An in-house instructor who desires to become an outside instructor shall submit a new instructor application, the application fee prescribed by law, proof of general liability insurance and training program that will be used to teach the students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:755 (December 1987), amended LR 18:194 (February 1992), LR 23:589 (May 1997), LR 26:1074 (May 2000), LR 31:

**Chapter 8. Licensee Suitability, Records, Investigations, and Registrant Violations**  
**§813. Unlawful Act**

A. No person shall engage in the business of providing contract security services except in accordance with Chapter 2 and the rules and regulations adopted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 15:852 (October 1989), LR 26:1076 (May 2000), LR 31:

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than May 10, 2005, at 4:30 p.m. to Wayne R. Rogillio, Executive Secretary, Louisiana State Board of Private Security Examiners, 15703 Old Hammond Highway, Baton Rouge, LA 70816.

Wayne R. Rogillio  
Executive Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Licensure and Training**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no implementation costs or savings to state or local governmental units as a result of these changes. This proposed amendment would be implemented without any additional employees or forms.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Proposed amendments will result in an increase in revenue collections for the state by an estimated \$160,000.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

These proposed amendments would require directly affected persons and nongovernmental groups to pay the fees related to licensure, fingerprinting or examination as prescribed by law. Under current law that amount would be more than what is currently being required by the Louisiana State Board of Private Security Examiners. Act 412 of the regular session increased the various license fees charged by the Louisiana State Board of Private Security Examiners, in the future if the law changes that amount would change accordingly.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

These proposed amendments will have no effect on competition or employment.

Wayne R. Rogillio  
Executive Secretary  
0504#008

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Office of Alcohol and Tobacco Control**

Tobacco Permits Importation of Tobacco  
(LAC 55:VII.3115)

Under the authority of R.S. 47:874 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., The Department of Revenue, Office of Alcohol and Tobacco Control, proposes to adopt LAC 55:VII.3115 pertaining to importation of tobacco and tobacco products.

LAC 55:VII.3117, entitled "Importation of Tobacco and Tobacco Products," provides that tobacco and tobacco products may only be imported into Louisiana by a wholesaler.

**Title 55**

**PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Subpart 2. Tobacco**

**Chapter 31. Tobacco Permits**

**§3115. Importation of Tobacco and Tobacco Products by Wholesaler Only**

A. Except as provided in Subsection B of this Section, tobacco and tobacco products, as defined in R.S. 26:901, produced or manufactured outside of this state cannot be sold or offered for sale in Louisiana, or shipped or transported into the state except to the holder of a wholesaler's permit. Delivery of tobacco and tobacco products produced or manufactured outside of this state must be made at the place of business of the wholesaler shown on the wholesaler's permit, and must be received and warehoused by the wholesaler at that place of business, where such tobacco and tobacco products must come to rest before delivery is made to any retailer.

B.1. Notwithstanding the provisions of Subsection A of this Section, tobacco and tobacco products may be sold and shipped directly to a consumer in Louisiana by the manufacturer or retailer of such tobacco or tobacco products domiciled outside of Louisiana, provided both that all taxes levied in R.S. 47:841 have been paid in full and that all of the following apply.

a. The consumer is 18 years of age or older.

b. The tobacco or tobacco product is for that consumer's personal consumption.

c. The total amount of tobacco or tobacco products shipped to any single household address does not exceed 4 cartons totaling 800 cigarettes in any individual shipment or 48 cartons totaling 9,600 cigarettes per calendar year.

d. The manufacturer or retailer engaging in such direct sales holds a valid manufacturer's or retailer's license issued by the state of its domicile.

e. The package in which the tobacco or tobacco products are shipped is prominently labeled as containing tobacco or tobacco products.

f. The package in which such tobacco or tobacco products are shipped is received by a person 18 years of age or older.

g. The package contains an invoice indicating the date of the shipment, providing a full and complete description of all items included in the shipment, and stating the price thereof.

h. The manufacturer or retailer has complied with the provisions of Subsections C and D of this Section.

i. The seller or shipper who is a manufacturer is not a party, directly or indirectly, to any agreement in which a wholesaler licensed by the state of Louisiana has been granted the right to purchase and to sell any tobacco and tobacco products produced by the manufacturer. This does not include any sale of tobacco and tobacco products perfected on the premises of the manufacturer and completed by shipment to a consumer in Louisiana otherwise made in accordance with the provisions of this Subsection.

2. For all purposes under this Title, the point of sale for transactions made pursuant to this Subsection shall be the place of domicile of the manufacturer or retailer. Delivery to the consumer in Louisiana shall be deemed to have occurred upon the placing of such tobacco and tobacco products into the possession of a common carrier for transport into the state of Louisiana.

C. Any manufacturer or retailer who sells and ships directly to a consumer in Louisiana pursuant to Subsection B of this Section must, within 20 days after the end of each calendar month, file with the Secretary of the Department of Revenue a statement showing the total amount of tobacco and tobacco products sold and shipped during the preceding calendar month, the number of packages sent in each shipment, the name brand of each package of tobacco and tobacco products included in such shipments, the quantities of tobacco and tobacco products included in such shipments, and the price of each item included in such shipments. All excise and sales or use taxes due to the state of Louisiana on the tobacco and tobacco products sold and shipped pursuant to Subsection B of this Section must be remitted by certified check or by electronic funds transfer at the time of the filing of the required statement and copies of all invoices transmitted with each such shipment must be attached to the statement. This statement must be made on forms prescribed and furnished by the Secretary of the Department of Revenue and must include such other information as the Secretary of the Department of Revenue may require.

D. Any retailer of tobacco or tobacco products who violates any provision of this Section will be subject to a civil penalty in the amount of \$25,000. Any retailer that sells and ships directly to consumers in Louisiana pursuant to Subsection B of this Section must, on the application for authority to make such shipments filed with the Secretary of the Department of Revenue in accordance with Subsection C of this Section, acknowledge in writing the civil penalty established in this Subsection and must consent to the imposition thereof upon violation of this Section. The secretary may initiate and maintain a civil action in a court of competent jurisdiction to enjoin any violation of this Section and to recover the civil penalty established in this Subsection, together with all costs and attorney fees incurred by the secretary incidental to any such action.

E. Upon determination by the Secretary of the Department of Revenue that an illegal sale or shipment of tobacco or tobacco products has been made to a consumer in

Louisiana by either a manufacturer or retailer of such tobacco or tobacco products, the secretary must notify both the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of tobacco or tobacco products has been violated and shall request those agencies to take appropriate action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:922.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 31:

#### **Family Impact Statement**

As required by Act 1183 of the Regular Session of the Louisiana Legislature, the following Family Impact Statement is submitted for publishing with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to the legislative oversight committees.

1. The Effect on the Stability of the Family. Adoption of this proposed Rule will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Adoption of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Adoption of this proposed Rule will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Budget. Adoption of this proposed Rule will have no effect on family earnings and budget.

5. The Effect on Behavior and Personal Responsibility of Children. Adoption of this proposed Rule will have no effect on behavior and responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. Adoption of this proposed rule will have no effect on the ability of the family or local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Murphy J. Painter, Commissioner, Office of Alcohol and Tobacco Control, Department of Revenue, 8549 United Plaza, Suite 220, Baton Rouge, LA 70809 or by fax to (225) 925-3975. All comments must be submitted by 4:30 p.m., Thursday, May 26, 2005. A public hearing will be held on Friday, May 27, 2005, at 10 a.m. in the Office of Alcohol and Tobacco Hearing Room at 8549 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

Murphy J. Painter  
Commissioner

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Tobacco Permits**

##### **Importation of Tobacco**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Adoption of proposed rule will not result in any additional costs or savings in enforcement for the Department of Revenue or the Office of Alcohol and Tobacco Control. The purpose of



proposed rule is to provide for regulatory provisions to govern the sale and import of tobacco and tobacco products purchased from out-of-state manufacturers/vendors.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Adoption of proposed rule may increase revenues derived from taxation of tobacco and tobacco products, which are currently entering Louisiana without being properly taxed. However, the effect on revenue collections by the state and local governmental units due to implementation of proposed rule cannot be accurately calculated at this time. There is no current measure of the amount of tobacco and tobacco products coming into Louisiana from out-of-state manufacturers/vendors. However, an increase in tax revenue is expected to result.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Adoption of this proposed Rule will have no effect on the costs and/or economic benefits to out-of-state manufacturers/vendors of tobacco and tobacco products as it relates to the manufacturing, distribution, and sale of such items. Instead, it will level the playing field on which out-of-state manufacturers/vendors and in-state vendors compete, thereby increasing competition by encouraging consumers to purchase tobacco and tobacco products from Louisiana vendors.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Adoption of this proposed Rule will ensure a level playing field on which all vendors of tobacco and tobacco products will compete. Leveling of this playing field will encourage competition by removing an unfair advantage currently held by out of state companies, which are currently selling such items without paying Louisiana state taxes. While this proposed amendment is unlikely to increase employment in the state, it will arguably lessen job loss.

Murphy J. Painter  
Commissioner  
0504#040

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Social Services Office of Family Support

#### TANF Initiatives Earned Income Tax Credit (EITC) Program (LAC 67:III.5581)

In accordance with R.S.49: 950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to adopt §5581, Earned Income Tax Credit as a new TANF Initiative.

The Earned Income Tax Credit (EITC) is a federal income tax credit for low-income workers who are eligible for and claim the credit. The credit reduces the amount of tax an individual owes, and may be returned in the form of a refund. The EITC is money for people who work but don't earn high enough income, and could use the EITC to put food on the table, move into better housing, invest in education, transportation, or save for the future. It raises incomes for local families.

Pursuant to Act 1 of the 2004 Regular Session of the Louisiana Legislature, the agency proposes to adopt §5581 to provide public awareness, education and targeted outreach

strategies regarding the benefits of claiming the Earned Income Tax Credit (EITC) Program, state tax credit programs, and free taxpayer assistance.

A Declaration of Emergency signed February 11, 2005, effected the changes and was published in the March 2005 issue of the *Louisiana Register*.

#### Title 67

### SOCIAL SERVICES

#### Part III. Family Support

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

#### Chapter 55. TANF Initiatives

#### §5581. Earned Income Tax Credit (EITC) Program

A. The agency has entered into contracts to provide public awareness, education and targeted outreach strategies regarding the benefits of claiming the Earned Income Tax Credit (EITC) Program, state tax credit programs, and free taxpayer assistance effective January 1, 2005. Strategies include collaboration with the Internal Revenue Service, various state departments and the targeted expansion of existing outreach activities to assure that free taxpayer assistance is available statewide.

B. 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.

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 1, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:

#### Family Impact Statement

1. What effect will this Rule have on the stability of the family? The stability of the family will be unaffected by this Rule.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? The Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? The Rule may affect family earnings and budget in a positive manner.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through May 24, 2005, to Adren O. Wilson, Assistant Secretary, Office of Family Support, and P.O. Box 94065, Baton Rouge, LA, 70804-9065.

A public hearing on the proposed Rule will be held on May 24, 2005, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or

arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann S. Williamson  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: TANF Initiatives Earned Income  
Tax Credit (EITC) Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will result in a \$315,544 increase in expenditures for fiscal year 04/05. In the current year, \$315,000 in TANF Funds have been allocated for the implementation and administration of the Earned Income Tax Credit (EITC) Program which is being adopted to promote a public awareness and training program regarding the benefits of claiming the earned income tax credit. The cost of publishing rulemaking is approximately \$544. The total estimated implementation cost is approximately \$315,544.

There are no savings to state or local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the EITC Program could result in an increase of \$1,426,869 in revenue for local governmental units in the form of sales tax. The above projection is based on the assumption that 100% of the unclaimed refunds would be claimed. It is highly probable that less than 100% will actually be claimed.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

There are no anticipated costs to any persons or non-governmental groups as a result of this rule.

The proposed Earned Income Tax Credit (EITC) should have a positive economic impact on those individuals eligible for the credit. Internal Revenue Service sources estimate that there were 93,022 eligible non-participants that could have filed EITC claims totaling \$81,187, 441 for an average refund of \$873 per claimant.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The proposed rule will have no impact on competition and employment.

Adren O. Wilson  
Assistant Secretary  
0504#054

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Treasury  
State Employees' Retirement System**

**Waiver of Electronic Funds Transfer (LAC 58.I.109)**

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System (LASERS) proposes to adopt LAC 58:I.109. This new Rule gives LASERS the option to use paper checks instead of

Electronic Funds Transfer (EFT) to pay benefits to surviving minor children of deceased members who have reached 18 years of age and are still eligible for the benefit. This Rule complies with and is enabled by R.S. 11:479 and 11:515.

**Title 58**

**RETIREMENT**

**Part I. State Employees' Retirement System**

**Chapter 1. General Provisions**

**§109. Waiver of the Electronic Funds Transfer**

**Requirement**

A. LASERS may, at its option, issue paper checks in lieu of an Electronic Funds Transfer (EFT) to surviving minor children under R.S. 11:471 et seq. in order to avoid overpayments or other administrative issues associated with the payment of such benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and 11:479.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 31:

**Family Impact Statement**

The proposed adoption of LAC 58.I.109 gives LASERS the option to use a paper check in lieu of the normally mandated Electronic Funds Transfer (EFT). This regulation 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.

No preamble for this Rule is necessary. Interested persons may submit written comments on the proposed Rule until 4:30 p.m., May 27, 2005, to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement, P.O. Box 44213, Baton Rouge, LA 70804.

Robert L. Borden  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Waiver of Electronic Funds Transfer**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No costs to state or local governmental units are anticipated to result from the implementation of this Rule. LASERS should experience a reduction of the number of overpayments to surviving minor children, which will in turn lead to a reduction in the need to recover such overpayments. It is not currently possible to estimate what the savings will be.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

No effect on revenue collections to state or local governmental units is expected to result from the implementation of this Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Rule deals with children of deceased LASERS members who remain eligible to receive a benefit under R.S. 11:471 et seq. after reaching age 18 because they remain single and a full-time student. No additional costs, paperwork or benefits are expected to result from the implementation of this Rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is expected to result from the implementation of these Rules.

Cindy Y. Rougeou  
Assistant Director  
0504#042

H. Gordon Monk  
Acting Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Snake Possession Permits (LAC 76:XV.101)

The Department of Wildlife and Fisheries and Wildlife and Fisheries Commission do hereby advertise their intent to require permits for private possession of constrictor snakes in excess of 12 feet long and of venomous snakes.

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 this Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R. S. 49:972(B).

**Title 76**

**WILDLIFE AND FISHERIES**

**Part XV. Reptiles and Amphibians**

**Chapter 1. Guidelines**

**§101. Recreational and Commercial Harvests;  
Prohibitions**

A. - J. ...

**K. Venomous and Large Constricting Snakes**

1. The importation and/or private possession of constrictor snakes in excess of 12 feet, including but not limited to the following species: Apodora papuana (Papuan python), Liasis olivacea, (Olive python), Morelia spilota (Carpet or Diamond python), Morelia kinghorni (Scrub python), Morelia amethystina (Amethystine python), Python natalensis (Southern African python), Python sebae (African Rock python), Python molurus (Indian or Burmese python), Python reticulatus (Reticulate python), any species of the genus Boa (Boa constrictors), and any species of the genus Eunectes (Anacondas), and venomous snakes, (hereinafter "restricted snakes") obtained in any manner, shall be by permit issued by the Department of Wildlife and Fisheries except for animals kept by animal sanctuaries, zoos, aquariums, wildlife research centers, scientific organizations, and medical research facilities as defined in the Animal Welfare Act as found in the United States Code Title 7, Chapter 54, 2132(e).

*Venomous Snakes* Any species under current taxonomic standing recognized to belong to the Families Viperidae (Pitvipers and Vipers), Elapidae (Cobras and Mambas), Hydrophiidae (Sea Snakes), Atractaspididae

(Mole Vipers), as well as the genera Dispholidus, Thelotornis, and Rhabdophis of the Family Colubridae only.

i. Any person requesting a permit to allow importation and/or private possession of venomous snakes shall demonstrate no less than one year of substantial, practical experience (to consist of no less than 500 hours) in the care, feeding, handling, and/or husbandry of the species for which the permit is sought, or other species within the same zoological order, which are substantially similar in size, characteristics, care, and nutritional requirements to the species for which the permit is sought.

ii. For the purpose of demonstrating compliance, applicants shall submit documentation of such experience, including a detailed description of the experience acquired, the dates and time frames the experience was obtained and the specific location(s) where it was acquired, and references of no less than two individuals having personal knowledge of your stated experience. Personal reference letters do not need to be authored by venomous reptile permit holders. Additional documentation may include records of prior permits for the keeping of venomous reptiles, employment records, or any other competent documentation of the required experience.

iii. Documented educational experience in zoology or other relevant biological sciences obtained at the college or technical school level or above may substitute for up to 250 hours of the required experience. The Department of Wildlife and Fisheries shall be responsible for judgment of the adequacy of the documentation.

iv. Applicant must be at least 18 years old at the time of application.

v. Notification of relocation of facilities shall be made within 30 days of a move, and permittee shall be allowed to keep the animals in the same setup(s) until the inspection of the facility and/or room and cages within which the animals are to be kept at the new location can be undertaken by Department of Wildlife and Fisheries personnel.

vi. In the event of an escape where a constrictor snake in excess of 12 feet or a venomous snake escapes its cage and its secure containment room, and becomes outside the control of the permit holder and/or owner, notification shall immediately be made to the Department of Wildlife and Fisheries emergency notification number.

vii. A secure transport container shall be required to transport venomous snakes away from any field collection sites.

viii. Those persons who can prove prior ownership of restricted snakes have 90 days from the final ruling to obtain a permit from the department.

ix. Restricted snakes shall be kept in secure, escape proof enclosures with doors that lock, or such secure enclosures shall be enclosed in secure, escape proof rooms that are kept locked except when the animals are being fed, the cages are being cleaned, or otherwise worked by the person trained and experienced in proper care, handling, and use of the species being maintained. Entrance doors shall be kept securely locked on all outdoor enclosures to prevent escape and unauthorized intrusion and the enclosure shall be equipped with barriers to prevent visitors from falling into enclosures that are constructed below ground level.

x. Facilities that house constrictor snakes in excess of 12 feet or venomous snakes in private possession shall be open to inspection prior to issuance of a permit and at other times deemed necessary to ensure compliance with the permit by Department of Wildlife and Fisheries personnel or other persons authorized by Department of Wildlife and Fisheries to perform such inspections.

xi. Any non-permitted individual in possession of restricted snakes shall have 30 days to obtain a permit. Any individual who possesses restricted snakes in a manner not compliant with this rule shall have 30 days to demonstrate compliance to Department of Wildlife and Fisheries personnel. Any individual who remain non-compliant after 30 days shall forfeit all restricted snakes to the Department of Wildlife and Fisheries personnel, who may dispose of the snakes in any manner.

2. A first violation of this Section will result in a five-year period of probation; a violation during the probationary period shall be considered a second violation, and will result in a one-year suspension of the permit; a third violation will result in a five-year suspension of a permit.

L. Except as provided in Subsection K, whoever violates the provisions of this rule shall be fined not less than \$25 nor more than \$100, or imprisoned for not less than 30 days, or both.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:6(10), (13), (15) and (25), R.S. 56:23, and R.S. 56:632.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 20:1135 (October 1994), amended LR 30:2495 (November 2004), LR 31:

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 comments relative to the proposed rule to Mr. Philip Bowman, Fur and Refuge Division, Department of Wildlife and Fisheries, Box 98000,

Baton Rouge, LA 70898-9000, prior to Thursday, June 2, 2005.

Wayne J. Sagrera  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Snake Possession Permits**

**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. A slight increase in workload and paperwork associated with issuance of permits is anticipated. Local government units will not be impacted.

**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 will affect present and future owners of large constrictor snakes in excess of twelve feet in length and all venomous snakes. They will be required to obtain a one-time permit from the Department of Wildlife and Fisheries and provide proof that they meet certain training and housing requirements. Importers and in-state dealers of venomous and large constrictor snakes are anticipated to experience little or no effect on commerce activities. The rule does not restrict commerce nor prohibit ownership of venomous or constrictor snakes, but is intended to ensure that these snakes are housed in a safe environment and that their owners have been trained in the handling and care of these reptiles.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change is not expected to affect competition and employment in the public or private sector.

Janice A. Lansing  
Undersecretary  
0504#046

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

# Committee Reports

## COMMITTEE REPORT

### Senate Committee on Agriculture, Forestry, Aquaculture and Rural Development

#### Petroleum Products (LAC 7:XXXV.351-365)

Pursuant to the authority of R.S. 49:950 et seq., the Senate and House Committees on Agriculture, Forestry, Aquaculture and Rural Development met jointly on April, 6, 2005, to conduct an oversight hearing relative to:

- 1) a Declaration of Emergency published in the March 20, 2005 *Louisiana Register* and adopted by the Commissioner of Agriculture and Forestry on February 18, 2005; and
- 2) a proposed Rule by the Department of Agriculture and Forestry published as a Notice of Intent in the January 20, 2005 *Louisiana Register*.

The Emergency Rule and proposed Rule adopt regulations governing the advertising, offering to sell, or sale at retail of motor vehicle fuels below cost to the retailer.

Members of the Senate committee expressed concern as to whether the department has the authority to issue such Rules. Additionally, concern was expressed as to whether the department should be involved in enforcement of the Unfair Sales Law.

The Senate committee determined that the Emergency Rule is unacceptable by a vote of 4-1. Additionally, the Senate committee determined that the proposed Rule is unacceptable by a vote of 4-1.

Senator Kenneth M. "Mike" Smith  
Chairman

0504#038

# Legislation

## LEGISLATION

### State Legislature House of Representatives

House Concurrent Resolution Number 56  
of the 2004 Regular Session by  
Representative Faucheux (by Request)  
Continuing Education Requirements  
(LAC 46:XXXVII.709)

Editor's Note: This Concurrent Resolution is being  
repromulgated to correct a printing error. This resolution was  
originally printed in the December 20, 2004 edition of the  
*Louisiana Register* on page 2989.

#### A Concurrent Resolution

To amend the Department of Health and Hospitals, Board  
of Embalmers and Funeral Directors, continuing education  
rule (LAC 46:XXXVII.709.E.6), regarding continuing  
education credits for instructors of approved courses, and to  
direct the *Louisiana Register* to print the amendments in the  
*Louisiana Administrative Code*.

WHEREAS, present rules require that all persons  
licensed by the board complete a minimum of four hours of  
approved continuing education in each one-year period to  
coincide with the renewal date of the license as a  
requirement of license renewal; and

WHEREAS, present rules provide that a licensed  
individual who conducts an approved course may receive  
credit for attendance at continuing education; and

WHEREAS, present rules also provide that a licensee  
may not receive credit for attending the same course more  
than once during the same one-year period; and

WHEREAS, licensed instructors of approved courses  
should receive continuing education credit for each class  
they instruct; however, each course shall be a different and  
distinct course; and

WHEREAS, R.S. 49:969 provides that "the legislature,  
by Concurrent Resolution, may suspend, amend, or repeal  
any rule or regulation or body of rules or regulations, or any  
fee or any increase, decrease, or repeal of any fee, adopted  
by a state department, agency, board, or commission."

THEREFORE, BE IT RESOLVED by the Legislature of  
Louisiana that the LAC 46:XXXVII.709(E)(6) is hereby  
amended to read as follows.

### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS Part XXXVII. Embalmers and Funeral Directors Chapter 7. License §709. Continuing Education

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#### E. Continuing Education Requirements

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6. A licensed individual who conducts an approved  
course may receive credit for attendance at continuing  
education.

AUTHORITY NOTE: Promulgated in accordance with R.S.  
37:840.

HISTORICAL NOTE: Promulgated by the Department of  
Health and Hospitals, Board of Embalmers and Funeral Directors,  
LR 20:1378 (December 1994), repromulgated LR 21:175 (January  
1995), amended by 2004 Regular Session, House Concurrent  
Resolution No. 10, LR 30:2990 (December 2004), amended by the  
Department of Health and Hospitals, Board of Embalmers and  
Funeral Directors, LR 30:2822 (December 2004, repromulgated LR  
31:1018 (April 2005).

BE IT FURTHER RESOLVED that the clerk of the House  
of Representatives is hereby directed to transmit a copy of  
this Resolution to the office of the *Louisiana Register*, the  
Louisiana State Board of Embalmers and Funeral Directors,  
and the Department of Health and Hospitals.

BE IT FURTHER RESOLVED that the *Louisiana  
Register* is hereby directed to have the amendment to LAC  
46:XXXVII.709.E.6 printed and incorporated into the  
*Louisiana Administrative Code* and to transmit a copy of the  
revised rule to the Louisiana State Board of Embalmers and  
Funeral Directors and the Department of Health and  
Hospitals.

Joe R. Salter  
Speaker of the House  
and  
Donald E. Hines  
President of the Senate

0504#009

# Administrative Code Update

CUMULATIVE: JANUARY – MARCH 2005

LAC Title	Part.Section	Effect	Location LR 31 Month Page	LAC Title	Part.Section	Effect	Location LR 31 Month Page				
4	III.701-715 V.2101	Adopted	Mar. 644	46	XXIII.107	Repromulgated	Jan. 43				
		Amended	Jan. 56			Amended	Jan. 73				
7	I.101 XIII.125,143 XIII.139,141 XXI.111 XXV.101,119,121 XXXV.301-347	Amended	Jan. 26	XLV.1503,1505,1513,1514 XLV.1519,4501-4505 XLV.1521-1529,4506 XLV.4511-4513 LIV.306 LXX.6653 LXIII.401-415 LXXX.Chapters 1-19	Amended	Jan. 73					
		Amended	Feb. 419		Adopted	Jan. 73					
		Amended	Jan. 35		Amended	Jan. 73					
		Amended	Feb. 419		Adopted	Feb. 441					
		Amended	Jan. 26		Adopted	Jan. 55					
		Adopted	Jan. 27		Adopted	Jan. 70					
13	V.201-215	Adopted	Feb. 420	48	I.Chapter 80 I.7401,7403,7413,7427,7443 I.7429 IX.1501-1513	Adopted	Feb. 442				
		Amended	Mar. 638			Amended	Mar. 669				
28	I.901,906,930 I.903 I.903 I.907,925 IV.301,501,504,505,509,703,803 IV.1903,2107,2301-2313 VI.107,311 XXXVII.2503 LXXIX.2511 LXXXIII.3501,4310,4313 LXXXIII.4310,4311,4313	Amended	Feb. 425	50	XV.701 XV.6903 XV.7101-7105 XV.7107 XVII.105,125,133 XVII.30101,30301-30303 XVII.30501-30503,30701 XVII.2101-2113	Repealed	Mar. 669				
		Amended	Mar. 636			Adopted	Jan. 86				
		Repealed	Mar. 638			Adopted	Mar. 668				
		Amended	Jan. 36			Amended	Mar. 667				
		Amended	Jan. 36			Amended	Mar. 664				
		Amended	Mar. 639			Adopted	Mar. 664				
		Amended	Mar. 638			Adopted	Jan. 85				
		Amended	Mar. 636			Adopted	Jan. 80				
		Amended	Feb. 423			Adopted	Jan. 80				
		Amended	Mar. 633			Adopted	Jan. 81				
		32	III.301,317 V.301,317 IX.301,317			Amended	Feb. 441	52	I.1902,1906,1907,1908,1909,1910	Repromulgated	Mar. 620
						Amended	Feb. 439			58	I.1301
Amended	Feb. 440			61	I.306 I.309 I.1134 I.4301 I.4355 I.4357 I.4359 I.4361 I.4363 I.4365 I.4367 I.4369 I.4371 I.4373 I.4402 I.4404 I.4406 I.4407 I.4408 I.4409 I.4410 I.4413 I.4416 I.4418 I.4420 I.4906 I.4910	Amended	Mar. 696				
Amended	Mar. 693	Amended	Jan. 90								
Amended	Mar. 675	Amended	Mar. 694								
33	III.1432 V.10107,10121 V.Chapters 301-304 IX.2501,2707,3113 IX.4701-4709,4719 IX.4731-4747 IX.5911 IX.7103 XV.102,113,325,326,351,399 XV.361 XV.421,499,575,588,756,757 XV.1503,1505,2017	Amended	Feb. 425			55	I.4355 I.4357 I.4359 I.4361 I.4363 I.4365 I.4367 I.4369 I.4371 I.4373 I.4402 I.4404 I.4406 I.4407 I.4408 I.4409 I.4410 I.4413 I.4416 I.4418 I.4420 I.4906 I.4910	Amended	Mar. 697		
		Amended	Feb. 425					Amended	Jan. 88		
		Adopted	Feb. 425					Amended	Jan. 100		
		Amended	Feb. 425					Amended	Jan. 90		
		Repealed	Feb. 425					Amended	Jan. 100		
		Amended	Jan. 44					Amended	Jan. 89		
		Adopted	Jan. 44					Amended	Jan. 91		
		Amended	Jan. 44					Amended	Jan. 92		
		Amended	Jan. 44					Amended	Jan. 97		
		Amended	Jan. 44	Amended	Jan. 98						
		Amended	Jan. 44	Amended	Jan. 94						
		Amended	Jan. 44	Amended	Jan. 91						
34	V.105	Adopted	Mar. 640	61	I.4402 I.4404 I.4406 I.4407 I.4408 I.4409 I.4410 I.4413 I.4416 I.4418 I.4420 I.4906 I.4910	Amended	Jan. 99				
		Adopted	Mar. 640			Amended	Jan. 92				
		Adopted	Mar. 640			Amended	Jan. 99				
		Adopted	Mar. 640			Amended	Jan. 92				
		Adopted	Mar. 640			Amended	Jan. 99				
		Adopted	Mar. 640			Amended	Jan. 95				
		Adopted	Mar. 640			Amended	Jan. 93				
		Adopted	Mar. 640			Amended	Jan. 95				
		Adopted	Mar. 640			Amended	Jan. 88				
		Adopted	Mar. 640			Amended	Jan. 93				
		Adopted	Mar. 640			Amended	Jan. 94				
		Adopted	Mar. 640			Amended	Jan. 97				
37	I.101,301-313,501,701-705 I.2501,2701,2901,3101-3121 I.3201,3301,5101 XIII.1901-1905,1909-1913 XIII.1915,1917,1937,1961 XIII.1919,1921,1925-1935 XIII.1923,1941,1947,1951 XIII.1939,1943-1945,1949 XIII.1953-1959 XIII.Chapter 95	Adopted	Mar. 673	67	III.1221,1247,5321,5705 III.5103,5107 III.5501,5509-5513,5525-5527 III.5533,5537-5539,5547 III.5553,5557,5567-5569	Amended	Mar. 699				
		Adopted	Mar. 673			Amended	Jan. 102				
		Adopted	Mar. 673			Amended	Jan. 101				
		Adopted	Mar. 673			Repealed	Feb. 484				
		Adopted	Mar. 673			Repealed	Feb. 484				
		Adopted	Mar. 673			Repealed	Feb. 484				
		Adopted	Mar. 673			Repealed	Feb. 484				
		Adopted	Mar. 673			Repealed	Feb. 484				
		Adopted	Mar. 673			Repealed	Feb. 484				
		Adopted	Mar. 673			Repealed	Feb. 484				
		Adopted	Mar. 673			Repealed	Feb. 484				
		Adopted	Mar. 673			Repealed	Feb. 484				
43	XIII.307,503,507,509 XIII.913,921,923,1104 XIII.1105,1110,1305,1307, 1309 XIII.1321,1513,1721,1727 XIII.2305,2711,2712,2923 XIII.2939,2943,3105,3303 XIII.3309,3311,3313,3317 XIII. 3321,3325,3327 XIII.3329,3333,3335,3337 XIII.3339,3341,3343,3345 XIII.5103,5105,5109	Amended	Mar. 679	67	III.1221,1247,5321,5705 III.5103,5107 III.5501,5509-5513,5525-5527 III.5533,5537-5539,5547 III.5553,5557,5567-5569	Amended	Mar. 679				
		Amended	Mar. 679			Amended	Mar. 699				
		Amended	Mar. 679			Adopted	Mar. 699				
		Amended	Mar. 679			Amended	Mar. 699				
		Amended	Mar. 679			Amended	Mar. 699				
		Amended	Mar. 679			Amended	Mar. 699				
		Amended	Mar. 679			Amended	Mar. 699				
		Amended	Mar. 679			Amended	Mar. 699				
		Amended	Mar. 679			Amended	Mar. 699				
		Amended	Mar. 679			Amended	Mar. 699				
		Amended	Mar. 679			Amended	Mar. 699				
		Amended	Mar. 679			Amended	Mar. 699				

LAC Title	Part.Section	Effect	Location LR 31 Month Page		LAC Title	Part.Section	Effect	Location LR 31 Month Page	
67	III.5577,5601-5631	Repealed	Feb.	484	70	I.315	Amended	Jan.	104
	III.5541,5545,5549,5561	Amended	Feb.	484		II.1901-1923	Adopted	Jan.	105
	III.5563,5573	Amended	Feb.	484		III.103-109	Amended	Mar.	727
	III.5579	Adopted	Feb.	488	76	VII.199	Adopted	Mar.	728
	III.5715,5727	Amended	Jan.	102		VII.367	Amended	Jan.	108
	V.2301	Amended	Jan.	101					
V.3507	Adopted	Feb.	484						



# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

Annual Quarantine Listing ©2005

In accordance with LAC 7:XV.107 and 109, we are hereby publishing the annual quarantine.

#### Sweetpotato Weevil

*(Cylas formicarius elegantulus Sum)*

(a) In the United States

(1) the states of Alabama, California, Florida, Georgia, Mississippi, North Carolina, South Carolina, Texas and any other state found to have the sweetpotato weevil.

(b) In the state of Louisiana

(1) The entire parishes of: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, DeSoto, East Baton Rouge, East Feliciana, Evangeline, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, Red River, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Feliciana.

#### Pink Bollworm

*(Pectinophora gossypiella Saunders)*

Pink bollworm quarantined areas are divided into generally infested and/or suppressive areas as described by USDA-PPQ.

##### Arizona

(1) Generally infested area: the entire state.

##### California

(1) Generally infested area: The entire counties of: Imperial, Inyo, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

(2) Suppressive area: The entire counties of: Fresno, Kern, Kings, Madera, Merced, San Benito, and Tulare.

##### Nevada

(1) Generally infested area: The entire counties of Clark and Nyle.

(2) Suppressive area: none.

##### New Mexico

(1) Generally infested area: the entire state.

##### Texas

(1) Generally infested area: the entire state.

#### Phytophagous Snails

The states of Arizona and California.

#### Sugarcane Pests and Diseases

All states outside of Louisiana.

#### Lethal Yellowing

The states of Florida and Texas.

#### Tristeza, Xyloporosis, Psorosis, Exocortis.

All citrus growing areas of the United States.

## Burrowing Nematode

*(Radopholus similis)*

The states of Florida and Hawaii and the commonwealth of Puerto Rico.

#### Oak Wilt

*(Ceratocystis fagacearum)*

##### Arkansas

(1) Infected counties: Baxter, Benton, Boone, Carroll, Clay, Craighead, Crawford, Franklin, Fulton, Independence, Izard, Johnson, Lawrence, Logan, Madison, Marion, Mississippi, Nevada, Newton, Poinsett, Pope, Randolph, Scott, Searcy, Sharp, Stone, Washington, and Yell.

##### Illinois

(1) Entire state.

##### Indiana

(1) Entire state.

##### Iowa

(1) Entire state.

##### Kansas

(1) Infected counties: Anderson, Atchison, Cherokee, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Linn, Miami, Neosho, Pottawatomie, Shawnee, and Wyandotte.

##### Kentucky

(1) Infected counties: Adair, Allen, Ballard, Bath, Bell, Boyd, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carter, Casey, Christian, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fleming, Floyd, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harlan, Hart, Henderson, Hopkins, Jefferson, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Logan, McCracken, McLean, Magoffin, Marshall, Martin, Menifee, Metcalfe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Oldham, Owsley, Perry, Pike, Powell, Pulaski, Rowan, Russell, Taylor, Todd, Trigg, Union, Warren, Wayne, and Webster.

##### Maryland

(1) Infected Counties: Allegany, Frederick, Garrett, and Washington.

##### Michigan

(1) Infected counties: Barry, Barrien, Calhoun, Cass, Clare, Clinton, Grand Traverse, Kalamazoo, Kent, Lake, Livingston, Manistee, Missaukee, Muskegon, Oakland, Roscommon, St. Joseph, Van Buren, Washtenaw, Wyne, and Menominee.

##### Minnesota

(1) Infected counties: Anoka, Aitkin, Blue Earth, Carver, Cass, Chicago, Crow Wing, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Le Sueur, McLeod, Mille Lacs, Morrison, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Steele, Wabasha, Waseca, Washington, Winona, and Wright.

##### Missouri

(1) Entire state.

##### Nebraska

(1) Infected counties: Cass, Douglas, Nemaha, Otoe, Richardson, and Sarpy.

North Carolina

(1) Infected counties: Buncombe, Burke, Haywood, Jackson, Lenoir, Macon, Madison, and Swain.

Ohio

(1) Entire state.

Oklahoma

(1) Infected counties: Adair, Cherokee, Craig, Delaware, Haskell, Latimer, LeFlore, Mayes, McCurtain, McIntosh, Ottawa, Pittsburg, Rogers, Sequoyah, and Wagoner.

Pennsylvania

(1) Infected counties: Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Centre, Clarion, Clinton, Cumberland, Erie, Fayette, Franklin, Fulton, Greene, Huningdon, Indiana, Jefferson, Juniata, Lawrence, Mifflin, Perry, Somerset, Venango, Washington, and Westmoreland.

South Carolina

(1) Infected counties: Chesterfield, Kershaw, Lancaster, Lee, and Richland.

Tennessee

(1) Infected Counties: Blount, Carter, Cocke, Cumberland, Grainger, Greene, Hamblen, Hancock, Hardeman, Hawkins, Jefferson, Knox, Lincoln, Loudon, Montgomery, Rhea, Roane, Robertson, Sevier, Sullivan, Union, Washington, and White.

Texas

(1) Infected counties: Bandera, Bastrop, Bexar, Blanco, Basque, Burnett, Dallas, Erath, Fayette, Gillespie, Hamilton, Kendall, Kerr, Lampasas, Lavaca, McLennan, Midland, Tarrant, Travis, Williamson.

Virginia

(1) Infected counties: Aleghany, Augusta, Bath, Botetoust, Clarke, Frederick, Giles, Highland, Lee, Loudoun, Montgomery, Page, Rockbridge, Rockingham, Scott, Shenandoah, Smyth, Warren, Washington, Wise, and Wythe.

West Virginia

(1) Infected counties: all counties except Tucker and Webster.

Wisconsin

(1) Infected counties: Adams, Brown, Buffalo, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Lincoln, Marquette, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Pepin, Pierce, Polk, Portage, Racine, Richland, Rock, St. Croix, Sauk, Shawano, Trempealeau, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood.

**Phony Peach**

Alabama

(1) Entire state.

Arkansas

(1) Counties of Arkansas, Ashley, Bradley, Chicot, Columbia, Crittendon, Cross, Desha, Drew, Hempstead, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River, Miller, Monroe, Nevada, Phillips, Pike, Poinsett, St. Francis, Sevier, Union, and Woodruff.

Florida

(1) Entire state.

Georgia

(1) Entire state.

Kentucky

(1) County of McCracken.

Louisiana

(1) Parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Jackson, Lincoln, Morehouse, Natchitoches, Ouachita, Red River and Union.

Mississippi

(1) Entire state.

Missouri

(1) County of Dunklin.

North Carolina

(1) Counties of Anson, Cumberland, Gaston, Hoke, Polk and Rutherford.

South Carolina

(1) Counties of Aiken, Allendale, Bamberg, Barnwell, Cherokee, Chesterfield, Edgefield, Greenville, Lancaster, Laurens, Lexington, Marlboro, Orangeburg, Richland, Saluda, Spartanburg, Sumter, and York.

Tennessee

(1) Counties of Chester, Crockett, Dyer, Fayette, Hardman, Hardin, Lake, Lauderdale, McNairy, Madison, and Weakley.

Texas

(1) Counties of Anderson, Bexar, Brazos, Cherokee, Freestone, Limestone, McLennan, Milan, Rusk, San Augustine, Smith, and Upshur.

**Citrus Canker**

*(Xanthomonas axonopodis pv. citri)*

Any areas designated as quarantined under the Federal Citrus Canker quarantine 7 CFR 301.75 et seq.

**Pine Shoot Beetle**

*[Tomiscus piniperda (L.)]*

Any areas designated as quarantined under the Federal Pine Shoot Beetle quarantine 7 CFR 301.50 et seq.

Bob Odom

Commissioner

0504#076

**POTPOURRI**

**Department of Civil Service  
Board of Ethics**

Public Hearing **C** Proposed Changes to Rules Concerning the Executive Branch Lobbying Disclosure Laws (LAC 52:I.101, 301, 1204, 1901, 2114, 2115, 2119, and 2123)

A Notice of Intent concerning the above referenced proposed Rule was published on January 20, 2005 in the *Louisiana Register* (see LR 31:117-146). Written comments on the proposed Rules were received and a public hearing was requested; therefore, a public hearing was conducted on February 25, 2005, at which the written comments, as well as oral comments were considered. The following substantive changes to the proposed rules were made during the course of the public hearing.

1. A definition was added to Chapter 1 of the Rules of the Board of Ethics (LAC 52:1) to define "Executive Branch Lobbyist Disclosure Act" as provided in R.S. 49:71, et seq. This change necessitate a change to the current definition of "Lobbyist Disclosure Act" to "Legislative Branch Lobbyist Disclosure Act," as well as to changes to refer to both the Executive Branch Lobbyist Disclosure Act and the Legislative Branch Lobbyist Disclosure Act in Sections 301(A)(10), 1204(B)(2), 1901 and 2101. The Sections would read as follows:

**Chapter 1. Definitions**

**§101. Definitions**

\* \* \*

*Executive Branch Lobbyist Disclosure Act* refers to R.S. 49:71, et seq.

\* \* \*

*Legislative Branch Lobbyist Disclosure Act* refers to R.S. 24:50, et seq.

\* \* \*

**Chapter 3. Duties of Executive Secretary**

**§301 Duties of Executive Secretary**

A. The executive secretary or his designee shall:

\* \* \*

10. receive all reports filed pursuant to the provisions of the Legislative Branch Lobbyist Disclosure Act and the Executive Branch Lobbyist Disclosure Act.

\* \* \*

**Chapter 12. Penalties**

\* \* \*

**§1204. Late Filing; Fee Schedule**

\* \* \*

B.2. The late filing fees for any reports filed by a lobbyist registered pursuant to the Legislative Branch Lobbyist Act shall be as provided in R.S. 24:58(D) and for any reports filed by a lobbyist registered pursuant to the Executive Branch Lobbyist Disclosure Act shall be as provided in R.S. 49:78(D).

\* \* \*

**Chapter 19. Legislative Branch Lobbyist Disclosure Act**

**§1901. In General**

A. The Legislative Branch Lobbyist Disclosure Act provides that the Board of Ethics shall administer and enforce the provisions of the Act.

2. Section 2109 was changed to remove the definition of "reportable expenditure." Accordingly, reference to "reportable expenditure" was deleted from Section 2115, which now reads as follows:

**§2115. Reporting; In General**

A. An expenditure should be reported by the lobbyist who would be required to account for the expenditure as an ordinary and necessary expense directly related to the active conduct of the lobbyist's, his employer's or the principal's trade or business.

B. Any expenditure made by a lobbyist on an executive branch official shall be reported regardless of a pre-existing personal or familiar relationship.

3. Section 2111 was changed to remove reference to the "Louisiana School Lunch Employees' Retirement System and their Board" and the "Louisiana State University Retirement System" under 2111(C)(XIX) as those boards are no longer

in existence. Also, Section 2111(C)(XXII) was amended to provide a complete listing of those boards and commissions known to exist, but which are not part of a specific executive branch department:

XXIII. Agencies not placed within a specific executive branch department

1. Advisory Board of the Old State Capital Museum
2. Associated Branch Pilots for the Port of Lake Charles Fee Commission
3. Associated Branch Pilots for the Port of New Orleans Fee Commission
4. Advisory Committee on Regulation of Water Well Drillers
5. Advisory Council for Early Identification of Hearing Impaired Infants
6. Agricultural Education Advisory Committee
7. Berwick Port Pilotage Fee Commission
8. Board of Commissioners Of the South Terrebonne Parish Tidewater Management & Consolidated District
9. Board of Commission of Tri-Parish Drainage and Water Conservation District
10. Board of Commissioner for the Amite River Basin Drainage
11. Board of Commissioner of the Louisiana Airport Authority
12. Board of Commissioners for the Millennium Port Authority
13. Board of Commissioners for the Port of New Orleans
14. Board of Commissioners of the Poverty Point Reservoir District
15. Board of Commissioners of the Ascension-St.James Airport and Transportation Authority
16. Board of Commissioners of the Atchafalaya Basin Levee District
17. Board of Commissioners of the Bayou D'Arbonne Lake Watershed District
18. Board of Commissioners of the Bayou Lafourche Freshwater District
19. Board of Commissioners of the Bossier Levee District
20. Board of Commissioners of the Caddo Levee District
21. Board of Commissioners of the Capital Area Groundwater Conservation District
22. Board of Commissioners of the East Jefferson Levee District
23. Board of Commissioners of the Ernest N. Morial-New Orleans Exhibition Hall Authority
24. Board of Commissioners of the Fifth Louisiana Levee District
25. Board of Commissioners of the Grand Isle Levee District
26. Board of Commissioners of the John K. Kelly Grand Bayou Reservoir District
27. Board of Commissioners of the Lafourche Basin Levee District
28. Board of Commissioners of the Lake Borgne Basin Levee District
29. Board of Commissioners of the Lake Charles Harbor and Terminal District
30. Board of Commissioners of the Morgan City Harbor and Terminal District
31. Board of Commissioners of the Natchitoches Levee and Drainage District
32. Board of Commissioners of the Nineteenth Louisiana Levee District
33. Board of Commissioners of the North Bossier Levee District
34. Board of Commissioners of the North Lafourche Conservation, Levee and Drainage District
35. Board of Commissioners of the North Terrebonne Parish Drainage and Conservation District

36. Board of Commissioners of the Orleans Levee District
37. Board of Commissioners of the Pontchartrain Levee District
38. Board of Commissioners of the Red River Levee and Drainage District
39. Board of Commissioners of the Red River, Atchafalaya and Bayou Boeuf Levee District
40. Board of Commissioners of the South Lafourche Levee District
41. Board of Commissioners of the St. Bernard Port Harbor and Terminal District
42. Board of Commissioners of the West Jefferson Levee District
43. Board of Control for Southern Regional Education
44. Board of Directors to the eight regional service centers of the Department of Education
45. Board of Directors for the Louisiana Tourism Promotion District
46. Board of Directors of the Louisiana State Lottery Corporation
47. Board of Examiners of Bar Pilots for the Port of New Orleans
48. Board of Morgan City, Berwick Port Pilot Commissioners and Examiners
49. Board of New Orleans and Baton Rouge Steamship Pilot Commissioners for the Mississippi River
50. Board of River Port Pilot Commissioners and Examiners for the Port of New Orleans
51. Board of River Port Pilot Commissioners and Examiners for the Port of Lake Charles
52. Board of Trustees of the Harbor Police Employees' Retirement System
53. Board of Trustees of the Louisiana Imports and Exports Trust Authority
54. Board of Trustees of the Louisiana Public Facilities Authority
55. Bossier Parish Pari-Mutuel Live Racing Facility Economic Redevelopment & Gaming Control Assistance District Board of Directors
56. Cane Waterway Commission
57. Cash Management Review Board
58. Child Death Review Panel
59. Choose Life Advisory Council
60. Commercial Building Energy Conservation Code Advisory Committee
61. Compensation Review Commission
62. Correctional Facilities Corporation
63. Correctional Institutions
64. Crescent City Connection Oversight Authority
65. Crescent River Port Pilots Association Fee Commission
66. Education Commission of the States
67. Election Board of the Louisiana Hall of Fame of the Arts
68. Emergency Medical Services for Children Advisory Council
69. Environmental Services Commission of St. Tammany Parish
70. Flood Control Project Evaluation Committee
71. Governing Board of the Caddo Pine Island Oil and Historical Museum
72. Governing Board of the Edward Douglass White Historic Site Museum
73. Governing Board of the Capital Area Human Services District
74. Grand Isle Port Commission
75. Greater Baton Rouge Port Commission
76. Greater Lafourche Port Commission
77. Henderson Poor Fund
78. Homeowner's Insurance and Property Insurance Task Force
79. Integrated Criminal Justice Information System Policy Board
80. Interstate Compact for the Supervision of Paroles' and Probationers
81. Interstate Compact on Juveniles
82. Jefferson Parish Human Services Authority
83. Judicial Compensation Commission
84. Judiciary Commission of Louisiana
85. Louisiana Cancer and Lung Trust Fund Board
86. Louisiana Commission on Addictive Disorders
87. Louisiana Data Base Commission
88. Louisiana Environmental Education Commission
89. Louisiana Executive Board on Aging
90. Louisiana Film and Video Commission
91. Louisiana Geographic Information Systems Council
92. Louisiana Historical Jazz Society
93. Louisiana Historical Records Advisory Board
94. Louisiana Home Instruction Program for Youngsters
95. Louisiana Judicial College
96. Louisiana Litter Reduction and Public Action Commission
97. Louisiana Music Commission
98. Louisiana Naval War Memorial Commission
99. Louisiana Pan African Commission
100. Louisiana Recreational Fishing Development Board
101. Louisiana Resource Recovery and Development Authority
102. Louisiana School Asbestos Abatement Commission
103. Louisiana Seafood Promotion and Marketing Board
104. Louisiana Soybean and Grain Research and Promotion Board
105. Louisiana State Board of Practical Nurse Examiners
106. Louisiana State Office of Rural Health
107. Louisiana State Polygraph Board
108. Louisiana Tuition Trust Authority
109. Natchitoches Parish Port Commission
110. New Orleans and Baton Rouge Steamship Pilotage Fee Commission
111. Office Facilities Corporation
112. Red River Compact Commission
113. Red River Parish Port Commission
114. Red River Waterway Commission
115. Regional and state advisory councils for community and family support services
116. Residential Building Contractors Subcommittee
117. Rev. Avery C. Alexander Memorial Commission
118. River Region Cancer Screening and Early Detection District Commission
119. Sabine River Compact Administration
120. School and District Accountability Advisory Council
121. Secondary School Redesign Study Commission
122. South Central Regional Transportation Authority
123. South Louisiana Port Commission
124. South Tangipahoa Parish Port Commission
125. Southern Growth Policies Board
126. Southern Rapid Rail Transit Compact
127. Sparta Groundwater Conservation District Board of Commissioners
128. St. Landry Par. Pari-Mutuel Live Racing Facility Economic Redevelopment and Gaming Control Assistance Board of Directors
129. State Artist Laureate
130. State Plumbing Board
131. State Technology Advisory Committee
132. Telephone Access Program Board
133. Board of Supervisors of Community and Technical Colleges

134. Any technical college or community college under the supervision of the Board of Supervisors of Community and Technical Colleges

4. *Section 2119 was changed to add clarification to as to what constitutes and invitation pursuant to R.S. 49:76F and reads as follows:*

**§2119. Reporting; Additional Disclosure Requirements under R.S. 49:76F**

\* \* \*

B. An executive branch official is considered to be invited only if he receives an invitation specifically addressed to him.

5. *Section 2123 was changed to allow an employer/principal to designate one of its lobbyists to report the total amount of an expenditure made in the presence of the lobbyists. Also, the requirement that a lobbyist must report expenditures not made in his presence was removed. Section 2123 now reads as follows:*

**§2123. Expenditure made Directly by the Principal or Employer**

A. An expenditure made directly by an employer or principal in a lobbyist's presence shall be attributed to and reported by the lobbyist. If more than one lobbyist is present, then the employer or principal shall designate which lobbyist shall report the total amount of the expenditure.

B. An employer or principal who makes such an expenditure is required to provide the following information to the lobbyist no later than two business days after the close of each reporting period:

1. the total amount of the expenditure
2. the amount of the expenditure that has been attributed to the lobbyist and which must be reported by the lobbyist;
3. the nature of the expenditure;
4. the names of the executive branch officials involved; and
5. the agencies of the executive branch officials involved.

C. Failure by the employer or principal to provide the necessary information to its lobbyist regarding such expenditure will cause the employer or principal to be required to register and report as a lobbyist and may subject the employer or principal to penalties.

6. *Section 2114 was added to provide that a lobbyist is only required to disclose those clients for whom expenditures are made. Reference to this fact was also included on the registration form in Section 2131. Section 2114 reads as follows:*

**§2114. Registration; Disclosure**

A. A lobbyist is required to list on his registration form the name and address of each person by whom he is employed and, if different, whose interests he represents, including the business in which that person is engaged, if expenditures are made by either the lobbyist, his employer or the principal with respect to lobbying on his behalf of that person.

The proposed rules, as well as the above changes, were approved by a joint committee meeting of House and Governmental Affairs and Senate and Governmental Affairs, at an oversight hearing conducted on March 29, 2005. However, at least one of the above-referenced changes may

be considered substantive to the parties affected by the rules; therefore, in accord with the Administrative Procedure Act, specifically R.S. 49:968(H)(2), notice is hereby given that a panel of the Board of Ethics will hold a public hearing on the substantive changes. The public hearing will be held at 10:00 a.m. on Friday, May 20, 2005, in the V. Jean Butler Board Room of the Louisiana Housing Finance Agency Building, 2415 Quail Drive, 1st Floor, Baton Rouge, LA 70808. All interested persons are invited to attend and present data, views, comments, or arguments orally or in writing.

Any questions concerning this notice may be directed to the attention of R. Gray Sexton, Ethics Administrator at (225) 763-8777.

R. Gray Sexton  
Ethics Administrator

0504#059

**POTPOURRI**

**Department of Environmental Quality  
Office of Environmental Assessment**

Advance Notice of Proposed Rulemaking and Solicitation of Comments on Abrasive Blasting Regulations, AQ249 (LAC 33:III.Chapter 13)

The Department of Environmental Quality is issuing an advance notice of proposed rulemaking in order to obtain early comments on issues associated with draft regulations regarding emissions from abrasive blasting. These will be new regulations in LAC 33:III.Chapter 13.Subchapter F (Log #AQ249).

The new regulations are intended to reduce particulate matter emissions from facilities that engage in abrasive blasting. This Rule will establish the following standards of performance for abrasive blasting: prohibited materials that cannot be used as abrasive material; required control equipment; maintenance of control equipment; recordkeeping requirements; and housekeeping requirements. Abrasive blasting is a common practice in Louisiana and is not currently regulated in a consistent manner. Many of the complaints received by the department are related to abrasive blasting emissions. This situation can be ameliorated by setting performance standards that apply to all businesses that engage in abrasive blasting.

Public input is requested on the draft regulations regarding:

1. determination of the fiscal and economic impact of the proposed regulations;
2. clarification of required performance standards and best management practices plans requirements;
3. clarification of recordkeeping requirements; and
4. addition of new definitions.

All interested persons are invited to submit written comments on the advance draft regulations. Persons commenting should reference the draft regulation by AQ249. Such comments must be received no later than June 1, 2005, at 4:30 p.m., and should be sent to Jennifer Mouton, Office of Environmental Compliance, Surveillance Division, Box 4312, Baton Rouge, LA 70821-4312 or to fax (225) 219-4083 or by e-mail to jennifer.mouton@la.gov. Copies of

the draft 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 AQ249. The draft regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

The draft 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; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

## Title 33 ENVIRONMENTAL QUALITY

### Part III. Air

#### Chapter 13. Emission Standards for Particulate Matter

##### Subchapter F. Abrasive Blasting

###### §1323. Emissions from Abrasive Blasting

A. Purpose. The purpose of this Subchapter is to reduce particulate matter emissions from facilities that engage in abrasive blasting.

B. Scope. This Subchapter applies to any facility in the state that engages in abrasive blasting.

C. Compliance. Compliance with these regulations does not eliminate the requirement to comply with any other state or federal regulation or any specific condition of a permit granted by the department.

1. Any new facility that was constructed after promulgation of these regulations shall comply with all of the requirements of this Subchapter before operation may commence.

2. Existing affected facilities shall comply with all of the requirements of this Subchapter as soon as practicable, but no later than one year after promulgation of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

###### §1325. Definitions

A. Terms used in this Subchapter are defined in LAC 33:III.111 with the exception of those terms specifically defined below.

*Abrasives (Abrasive Media, Abrasive Material)* Any material used in abrasive blasting operations including, but not limited to, sand, slag, steel shot/grit, garnet, CO<sub>2</sub>, or walnut shells.

*Abrasive Blasting* The operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

*Abrasive Blasting Equipment* Any equipment utilized in abrasive blasting operations.

*Emission Control Equipment* Any device or contrivance, operating procedure, or abatement scheme including, but not limited to, filters, ventilation systems, shrouds, or best management practices, that prevents or reduces the emission of air contaminants from blasting operations.

*Enclose* To place either tarps, shrouds, or a solid structure on all sides and the top of an area used for abrasive blasting, or to fully enclose a structure to be blasted.

*Hydroblasting* Any abrasive blasting using high-pressure liquid as the propelling force or as the active cleaning agent.

*Indoor Abrasive Blasting* Abrasive blasting conducted inside of a permanent building equipped with a particulate matter collection system.

*Nuisance* Any condition of the ambient air beyond the property line of the offending source that is offensive to the senses, or that causes or constitutes an obstruction to the free use of property, so as to unreasonably interfere with the comfortable enjoyment of life or property. In determining whether or not a nuisance exists, the department may consider factors including, but not limited to, the following:

- a. frequency of the emission;
- b. duration of the emission;
- c. intensity and offensiveness of the emission;
- d. number of persons impacted;
- e. extent and character of the detriment to complainants; and
- f. the source's ability to prevent or avoid harm.

*Shade Factor* For shrouds, the percent of area impermeable to particles 100 grit or greater, or to sunlight.

*Shroud (Tarp)* A device that is designed to enclose or surround the blasting activity to minimize the atmospheric dispersion of fine particulates and direct that material to a confined area for subsequent removal and disposal.

*Surround* To place either tarps, shrouds, or a solid structure on all sides of an area used for abrasive blasting.

*Wet Abrasive Blasting* Any abrasive blasting using a suspension of abrasives in water.

*Vacuum Blasting* Any abrasive blasting in which a seal is maintained between the assembly and the blasting surface, thereby allowing the spent abrasive, surface material, and dust to be immediately collected by a vacuum device, equipped with a high efficiency (at least 95 percent) particulate filtration system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

###### §1327. Blasting Operations

###### A. Abrasive Materials and Methods

1. Material derived from hazardous, toxic, medical, and/or municipal waste is prohibited from use as abrasive material.

2. Abrasives shall contain less than 1 percent (by weight) of fines that would pass through a No. 80 sieve as documented by the supplier. For the purpose of determining weight percent of fines from abrasive material, samples shall be taken according to ASTM standard ASTM D 75-87, reapproved 1992.

3. Abrasives shall not be reused unless they meet the requirements of Paragraph A.2 of this Section.

B. The following abrasives and blasting methods are exempt from the provisions of Paragraphs A.2-3 of this Section and LAC 33:III.1329.A:

1. iron or steel shot/grit;
2. CO<sub>2</sub>;

3. other abrasives, as approved by the department;
4. hydroblasting or wet abrasive blasting; and
5. vacuum blasting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

### §1329. Performance Standard

- A. Affected facilities shall either:
  1. fully enclose the structure or item to be blasted; or
  2. prepare and implement a best management practices plan as described in LAC 33:III.1331.
- B. Abrasive blasting shall not be conducted when wind speeds render containment systems inoperable.
- C. The structure or item being blasted shall be blasted in a downward manner where practical.
- D. A windsock or other device or method for determining wind direction shall be installed and maintained on the property.
- E. Blast cabinet exhaust shall be re-circulated to the cabinet or vented to emission control equipment.
- F. If tarps are used to confine emissions due to abrasive blasting, the tarps shall:
  1. have overlapping seams to prevent leakage of particulate matter;
  2. have a shade factor of 80 percent or greater; and
  3. be repaired prior to use if any tears greater than 1 foot in length are present.
- G. If blasting is performed in a permanent building with a particulate matter collection system, the collection system shall be exhausted through effective control equipment with a particulate matter outlet grain loading of 0.30 g/dscf or less, as documented by the control equipment manufacturer.
- H. Abrasive blasting performed over waters of the state shall be fully contained. No blasting material or visible floating solids shall reach waters of the state unless such discharge is authorized according to the LPDES permit program.
- I. Abrasive blasting activities shall not create a nuisance. Moreover, additional controls may be needed even if applicable control requirements are implemented.
- J. All emission control equipment shall be used and diligently maintained in proper working order whenever any emissions are being generated that can be controlled by the facility, even if the ambient air quality standards in affected areas are not exceeded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

### §1331. Best Management Practices Plans

- A. When an affected facility determines that fully enclosing the structures or item being blasted is not practical, the owner/operator shall clearly demonstrate such impracticality and develop and implement a best management practices (BMP) plan. Facilities that decide to use a BMP plan to comply with this Subchapter shall comply with all other requirements of this Subchapter.
- B. A complete copy of the BMP plan shall be kept at the facility and be made available to authorized representatives of the department upon request. Plans need not be submitted

to the department unless requested by an authorized representative of the department.

C. Each facility shall have a designated person who is accountable for the implementation and effectiveness of the BMP plan.

#### D. Amendment of BMP Plans

1. After review of the plan by the department and/or upon receiving notice of a complaint, the department may require the owner/operator of the facility to amend the plan if there are indications that the plan does not adequately prevent nuisances and/or adverse off-site impacts.

2. The plan shall be amended whenever physical or operational modification of the facility renders the existing plan inadequate. The amendment shall be implemented prior to or concurrent with the facility modification.

E. Periodic Review of BMP Plans. Operators of facilities shall review the plan every three years to determine if the plan adequately reduces nuisances and adverse off-site impacts. If it is determined that the plan is not adequate, the plan shall be amended within 90 days of the review to include more effective emission prevention and control technology.

F. The BMP plan shall be prepared in accordance with sound engineering practices. The department recognizes that the designs of facilities differ and that in certain cases the appropriate methods for emission prevention and control must be site-specific. The plan information shall be presented in the following sequence:

1. name, mailing address, and location of the facility;
2. name of the operator of the facility;
3. date and year of initial facility operation;
4. a brief but adequate description of the facility including an indication of any nearby recreational areas, residences, or other structures not owned or used solely by the facility, and their distance and direction from the facility;
5. a brief but accurate description of any nearby waters of the state that may be affected, and their distance and direction from the facility;
6. facility capability and procedures for taking corrective actions and/or countermeasures when nuisances and/or adverse off-site impacts occur;
7. facility procedures for preventing nuisances and/or adverse off-site impacts including a description of any emission control equipment;
8. written procedures for self-monitoring and annual self-inspection of the facility;
9. personnel training records as required by this Subchapter; and
10. signatures of responsible officials.

#### G. Personnel training shall be included in the BMP plan.

1. Any employee and/or contractor conducting abrasive blasting shall be trained on proper abrasive blasting methods, proper handling of abrasive and spent material, floatable solids, the facility's plan, and good housekeeping practices for the facility.

2. Employees and contractors shall receive training pertaining to the plan at least once a year or when significant changes are made to the plan that affect their activities.

3. Contractors shall be notified of and required to perform in accordance with the plan applicable to activities related to their contract.

4. Employees, contractors, and customer representatives shall be instructed not to dispose of abrasive, spent, and floatable materials to air and water bodies or to drains, drainage channels, or trenches that lead to water bodies.

#### H. Inspections and Records

1. The BMP plan shall provide for annual self-inspections in accordance with written procedures developed for the facility. Inspection records shall be signed or initialed by the inspector, appropriate supervisor, or the facility designee, and shall be retained for a minimum of three years.

2. In addition to other recordkeeping and reporting requirements of this Section, the following records should be maintained on the facility premises:

- a. annual self-inspection reports;
- b. documentation of employee and contractor training including dates, subjects, and hours of training and a list of attendees with signatures.

I. Verification by the Department. Facilities for which this Subchapter applies may be inspected by an authorized representative of the department to ensure implementation and adequacy of the BMP plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

### §1333. Recordkeeping and Reporting

A. The facility owner/operator shall maintain the following records on the facility premises at all times, and present them to an authorized representative of the department upon request:

1. application approval records and permit to construct/operate, where applicable;
2. type of *emission control equipment* as defined in LAC 33:III.1325;
3. description and diagram showing the location of blasting operations on-site;
4. observations of wind direction recorded hourly when abrasive blasting is being performed;
5. visual observations for particulate matter emissions recorded hourly during occurrences of abrasive blasting activity;
6. daily record of actual operating times when blasting is performed, based on a 24-hour clock;
7. monthly record of abrasive material usage including weight percent of fines in abrasive material per the manufacturer or per sampling, if abrasive material is being reused. For the purpose of determining weight percent of fines from abrasive material, samples shall be taken according to ASTM standard ASTM D 75-87, reapproved 1992;
8. applicable test results and data derived from containment, ventilation, air, soil, fines, and other monitoring results; and
9. records of how spent material is handled, recycled, reused, or disposed of including the name of, and any manifests or receipts from, any off-site facilities that accept the spent material.

B. Records required by this Subchapter or any BMP plan used to attain compliance with this Subchapter shall be maintained on a rolling three-year retention period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

Wilbert F. Jordan, Jr.  
Assistant Secretary

0504#028

## POTPOURRI

### Department of Environmental Quality Office of Environmental Assessment

#### Notification of Application Period for Louisiana Targeted Brownfields Assessment Services

The Louisiana Department of Environmental Quality, Office of Environmental Assessment will be accepting applications for Louisiana Targeted Brownfields Assessment (TBA) Services during an application period beginning April 21, 2005 and ending at the close of business on June 6, 2005.

LDEQ will perform a limited number of Phase 1 and Phase 2 environmental assessments on brownfields properties to be selected from applications received during this application period. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

These Targeted Brownfields Assessments are intended to promote the cleanup, redevelopment, and re-use of brownfield properties in our state.

Eligible applicants must be local government, quasi-government, or qualified non-profit entities. Eligible properties must be brownfields which are owned or anticipated to be acquired by the local government, quasi-government (e.g., planning commissions), or qualified non-profit entities. Properties contaminated only with petroleum products or contaminants are not eligible for Louisiana TBA Services at this time.

Each eligible applicant can submit applications for assessments for a maximum of three brownfields properties.

Complete eligibility requirements and ranking factors are contained in the Louisiana Targeted Brownfields Assessment Application Package, which also includes guidelines for the application process and completing the application, an application form, and a Right-of-Way, Access, and Use Agreement. The Louisiana TBA Services Application Package is available on our website: [www.deq.louisiana.gov/brownfields](http://www.deq.louisiana.gov/brownfields). Potential applicants may also request an Application Package directly by contacting Roger Gingles or Duane Wilson at LDEQ Remediation Services Division, Box 4314, Baton Rouge, LA 70821; by phone at (225) 219-3236; or by email at [brownfields@la.gov](mailto:brownfields@la.gov).

Three copies of each completed application must be mailed to the above address or delivered to LDEQ Remediation Services Division at 602 North Fifth St., Baton Rouge, LA 70802. Applications that are hand-delivered should be placed in the first floor drop box.

All applications will be reviewed by LDEQ and applications that meet eligibility requirements will be



ranked. LDEQ and/or its contractor may perform a site visit prior to final selection. Successful applicants will be notified by certified mail.

Please contact Roger Gingles or Duane Wilson at (225) 219-3236 if you have any questions regarding this notification.

Wilbert F. Jordan, Jr.  
Assistant Secretary

0504#055

**POTPOURRI**

**Office of the Governor  
Office of Elderly Affairs**

Hearing Notice Correction  
Family Caregiver Support Program  
(LAC 4:VII.1101, 1105, 1237, 1245, and 1275)

Editor's Note: The referenced Notice of Intent may be viewed on pages 802 of the March 20, 2005 edition of the *Louisiana Register*.

The Governor's Office of Elderly Affairs advises that the date for the public hearing regarding the proposed changes in the Family Caregiver Support Program in the March 20, 2005 has been changed. The new date for the public hearing will be Thursday, April 28, 2005.

The public hearing on the proposed Rule will be held at 9 a.m. April 28, 2005, in the Governor's Office of Elderly Affairs, first floor Conference Room, 412 North Fourth Street, Baton Rouge, LA 70802. All interested persons may submit written comments to Margaret McGarity, Compliance and Planning, 412 North Fourth Street, Baton Rouge, LA 70802 or by facsimile (225) 342-7133 by 4:30 p.m. April 28, 2005.

Godfrey White  
Executive Director

0504#075

**POTPOURRI**

**Department of Revenue  
Policy Services Division**

Natural Gas Severance Tax Rate

The natural gas severance tax rate effective July 1, 2005, through June 30, 2006, has been set at 25.2 cents per thousand cubic feet (MCF) measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of 60 degrees Fahrenheit.

This tax rate is set each year by multiplying the natural gas severance tax base rate of 7 cents per MCF by the "gas base rate adjustment" determined by the Secretary of the Department of Natural Resources in accordance with R.S. 47:633(9)(d)(i). The "gas base rate adjustment" is a fraction, of which the numerator is the average of the New York Mercantile Exchange (NYMEX) Henry Hub settled price on the last trading day for the month, as reported in the Wall Street Journal for the previous 12-month period ending on March 31, and the denominator is the average of the monthly

average spot market prices of gas fuels delivered into the pipelines in Louisiana as reported by the Natural Gas Clearing House for the 12-month period ending March 31, 1990 (1.7446 \$/MMBTU).

Based on this computation, the Secretary of the Department of Natural Resources has determined the natural gas severance "gas base rate adjustment" for April 1, 2004, through March 31, 2005, to be 360.58 percent. Applying this gas base rate adjustment to the base tax rate of 7 cents per MCF produces a tax rate of 25.2 cents per MCF effective July 1, 2005, through June 30, 2006. The reduced natural gas severance tax rates provided for in R.S. 47:633(9)(b) and (c) remain the same.

The "gas base rate adjustment" and the "gas tax rate" are being published as required by R.S. 47:633(9)(d)(i). Questions concerning the natural gas severance tax rate should be directed to the Taxpayer Services Division, Severance Tax Section at (225) 219-7656, Option 1.

Cynthia Bridges  
Secretary

0504#016

**POTPOURRI**

**Department of Social Services  
Office of Community Services**

Louisiana's Child and Family Services Plan and  
Annual Progress and Services Report

The Louisiana Department of Social Services (DSS) announces opportunities for public review of the state's Child and Family Services Plan (CFSP) and the 2005 Annual Progress and Services Report (APSR). The CFSP is a planning document that outlines the goals and objectives/outcomes of the Office of Community Services (OCS) for the time period beginning October 1, 2005 and ending September 30, 2009, with regard to the use of Title IV-B, Subpart 1 and Subpart 2 funds, Title IV-E Independent Living Initiative funds, and, Child Abuse Prevention & Treatment Act (CAPTA) funds. The APSR is the report on the achievement of goals and objectives/outcomes and amends any changes to the agency's plan in the provision of services. It is completed on an annual basis for each year of the CFSP. The 2005 APSR provides information on the achievement of goals and objectives for year one of the CFSP.

Through the DSS/OCS, Louisiana provides services that include child protection investigations, family services, foster care, adoption and the John H. Chafee Independence Living Program. OCS will use its allotted funds provided under the Social Security Act, Title IV-B, Subpart 1, to provide child welfare services to prevent child abuse and neglect; to prevent foster care placement, to reunite families, to arrange adoptions, and to ensure adequate foster care. Title IV-B, Subpart 2, entitled Promoting Safe and Stable Families, includes services to support families and prevent the need for foster care. The John H. Chafee Independence Living Program funds services to assist foster children 15 years old and older who are likely to remain in foster care until age 18. Former foster care recipients who are 18 to 21 years of age who have aged out of foster care are also

eligible for services. The services include basic living skills, training and education, and employment initiatives. The CAPTA funding is used to complement and support the overall mission of OCS with emphasis on developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

We are encouraging public participation in the planning of services and the writing of this document. The CFSP and the APSR are available for public review at all OCS parish and regional offices, Monday through Friday from 8:30 a.m. to 4 p.m. Copies are available for review in the state library located at 701 N. Fourth Street, Baton Rouge, LA, and its repositories statewide. Also, the report can be reviewed on the Internet at [www.dss.state.la.us](http://www.dss.state.la.us) by scanning down to the

OCS, CFSR. Inquires and comments on the plan may be submitted to the OCS Assistant Secretary, Post Office Box 3318, Baton Rouge, LA 70821.

A public hearing on the CFSP and the APSR is scheduled for Friday, May 20, 2005, at 10 a.m. at the Office of Community Services, Commerce Building, 333 Laurel Street, Room 652, Baton Rouge, LA. At the public hearing, all interested persons will have the opportunity to provide recommendations on the plan, orally and/or in writing.

Ann Silverberg Williamson  
Secretary

0504#053

**CUMULATIVE INDEX**  
(Volume 31, Number 4)

Pages	2005	Issue
1 - 383.....		January
384 - 609.....		February
610 - 879.....		March
880 - 1035.....		April

  

EO	Executive Order
PPM	Policy and Procedure Memoranda
ER	Emergency Rule
R	Rule
N	Notice of Intent
CR	Committee Report
GR	Governor's Report
L	Legislation
P	Potpourri

**ADMINISTRATIVE CODE UPDATE**

**Cumulative**

January 2004 - December 2004, 372  
January 2005 - March 2005, 1019

**AGRICULTURE AND FORESTRY**

**Agriculture and Environmental Sciences, Office of Structural Pest Control Commission**

Aerial applications of 2,4-D, 884ER  
Pesticide restrictions, 885ER  
Structural pest control, 26R  
Termiticides and manufacturers, 376P

**Agro-Consumer Services**

Chloramphenicol in  
crabs/crabmeat, 387ER  
honey, 390ER  
shrimp/crawfish, 392ER  
Petroleum product specifications, 27R, 613ER

**Animal Health Services, Office of**

Meat and poultry inspection, 8ER

**Commissioner, Office of the**

Motor vehicle fuels, 112N  
Overtime and holiday inspection service, 115N  
Pet turtles, 886ER  
Electing soil and water district supervisor, 898R

**Forestry, Office of**

Timber stumpage values, 376P

**Horticulture Commission**

Annual quarantine listing, 2005, 1021P  
Landscape architect registration exam, 376P, 603P  
Landscape irrigation contractors licensing, 110N  
Retail floristry examination, 603P

**Livestock Sanitary Board**

Public livestock auction charters, 419R  
Scrapie in sheep/goats, 949N  
Petroleum products, 1017CR

**Seed Commission**

Bulk seed, 35R  
Certification standards, 419R  
Seed law, 729N

**State Market Commission**

Market bulletin subscriber fee, 26R  
Meat grading and certification, 8ER, 116N

**CIVIL SERVICE**

**Ethics, Board of**

Ethics, 620R  
Lobbying  
Executive branch, 117N, 1022P  
Expenditure report, 899R

**ECONOMIC DEVELOPMENT**

**Auctioneers Licensing Board**

Licensing/Bonds, 489N

**Business Development, Office of**

EDAP Award Program, 146N, 902R  
EDLOP Loan Program, 146N, 902R

**Secretary, Office of the**

Governor's Economic Development Rapid Response Program, 420R

**EDUCATION**

**Elementary and Secondary Education, Board of**

Bulletin 111  
Accountability, 423R, 494N, 633R, 737N, 912R  
Bulletin 116  
Classical languages, 744N  
Bulletin 118  
Statewide assessment, 753N  
Bulletin 741  
Codification of Bulletin 741, 495N  
Curriculum and instruction, 791N  
Graduation exit exam, 636R  
Bulletin 746  
Ancillary school librarian certification, 950N  
Certification requirements, 636R  
Donation of  
Immovables, 557N  
Movables, finance, property, 558N  
PRAXIS  
Exams/passing scores, 425R, 794N  
Exam timelines, 793N

Bulletin 1196  
Food and Nutrition Programs, 951N  
Bulletin 1530  
Louisiana IEP Handbook for Students with Disabilities, 913R

## EDUCATION (continued)

Bulletin 1566

High stakes testing policy, 952N

Bulletin 1872

Extended School Year Program Handbook, 915R

Bulletin 1943

Policies/Procedures for Louisiana Teacher

Assistance and Assessment, 638R

Personnel, accounting and reporting policies, 798N

School standards, content and approval, 638R

### Student Financial Assistance Commission

#### Student Financial Assistance, Office of

Scholarship/Grants Program

Legislation 2004, 36R

Rockefeller Scholarship, 9ER, 157N

#### Tuition Trust Authority

Start Saving Program

Education savings account, 639R

Textbook adoption standards, 917R

## ENVIRONMENTAL QUALITY

### Environmental Assessment/Environmental Planning Division, Office of

Abrasive blasting regulations, 1025P

Activities list, insignificant, 564N

Air regulations, 567N

Baton Rouge rate of progress/SIP, 377P

Baton Rouge vehicle miles traveled/SIP, 378P

Bayou Anacoco subsegment, 159N, 920R

Brownfields assessment services, 1028P

Certified solid waste operator, 43R

Cleanup Package, 959N

Contaminated media sites, 888ER

Cooling water intake, 425R

Cypress Island Coulee Wetland, 157N, 917R

Emissions estimation methods, 15ER

Expedited penalty agreement, 10ER, 396ER

Incorporation by reference-2004, 561N, 918R

Medical events occurring from x-rays, 565N

Medical physicist/event, authorized, 560N

NCR authorization cleanup package, 44R

Numerous criterion of sulfates, 159N

Organic compounds exemptions, 731N, 887ER

Permit deadline for oil and gas construction postponement, 615ER, 967N

Security sensitive information, 732N

SIP general revisions, 603P, 871P

Solid waste landfills, 604P

Transportation conformity, IBR, 161N, 639R

Waste tires, 734N, 872P, 889ER

## EXECUTIVE ORDERS

KBB 04-58 **B**Bond Allocation **L**Louisiana Public Facilities Authority, 1EO

KBB 04-59 **B**Bond Allocation **L**Louisiana Public Facilities Authority, 1EO

KBB 04-60 **B**Bond Allocation **D**Denham Springs/Livingston Housing and Mortgage Finance Authority, 2EO

KBB 04-61 **B**Bond Allocation **C**Calcasieu Parish Public Trust Authority, 2EO

KBB 04-62 **B**Bond Allocation **E**East Baton Rouge Mortgage Finance Authority, 3EO

KBB 04-63 **B**Bond Allocation **I**Industrial District No. 3 of the Parish of West Baton Rouge, State of Louisiana, 4EO

KBB 04-64 **B**Bond Allocation **I**Industrial Development Board of the Parish of Calcasieu, Inc., 4EO

KBB 04-65 **C**2004 Carry-Forward Bond Allocation **L**Louisiana Public Facilities Authority **S**Student Loan Revenue Bonds, 5EO

KBB 04-66 **C**2004 Carry-Forward Bond Allocation **L**Louisiana Housing Finance Agency Multi-Family Mortgage Revenue Bond Program, 6EO

KBB 05-01 **H**Homeland Security Advisory Council, 6EO

KBB 05-02 **L**Louisiana Task Force on Workforce Competitiveness, 384EO

KBB 05-03 **T**The Board of Parole, 385EO

KBB 05-04 **M**Maritime Advisory Task Force, 610EO

KBB 05-05 **U**Urban Search and Rescue Commission, 610EO

KBB 05-06 **D**Drug Control and Violent Crime Policy Board, 611EO

KBB 05-07 **G**Grant Application Policy, 612EO

KBB 05-08 **S**State Employee Drug Testing Policy, 880EO

KBB 05-09 **L**Louisiana Federation Property Assistance Agency, 881EO

KBB 05-10 **B**Bond Allocation **L**Louisiana Housing Finance Agency, 882EO

## GOVERNOR

### Administration, Division of Facility Planning and Control, Office of

Capital improvement projects, 568N  
Performance based energy, 640R

### Group Benefits, Office of

EPO Plan of Benefits  
Hearing aids/minor dependents, 439R  
MCO Managed Care Option  
Hearing aids/minor dependents, 440R  
National Guard, 800N, 969N  
PPO Plan of Benefits  
Hearing aids/minor dependents, 441R

### Home Inspectors, Board of

Training, 968N

### Racing Commission

Corrupt/prohibited practices, 974N  
Vesting of title/tests, 975N  
Video poker purses, 974N

### Risk Management, Office of

Claims, reporting of, 56R

### State Lands, Office of

Immovable property, 971N

### Uniform Payroll, Office of

Overpayments, recoupment of, 644R

## **GOVERNOR (continued)**

### **Boxing and Wrestling Commission**

Emergency medical tech requirement, 401ER  
Standards, 402ER

### **Certified Public Accountants, Board of**

Uniform CPA exam fees, 798N

### **Crime Victims Reparations Board**

Award limits, 568N

### **Elderly Affairs, Office of**

Family Caregiver Support Program, 802N, 1029P

### **Motor Vehicle Commission**

Motor vehicle sales finance, 162N, 921R

### **New Orleans/Baton Rouge Steamship Pilots,**

#### **Board Examiners for the**

Mandatory rest period, 16ER, 55R

### **Oil Spill Coordinator's Office**

Environmental assessment plan, 873P

### **Racing Commission**

Corrupt and prohibited practices, 407ER

Human recombinant erythropoietin

and/or darbepoietin, 407ER

Vesting of title; tests, 407ER

### **Real Estate Appraisers Board**

Appraisers, 804N

## **HEALTH AND HOSPITALS**

### **Addictive Disorders, Office of**

Addictive disorder practice requirements, 646R

### **Citizens with Developmental Disabilities, Office of**

At-risk juveniles pilot programs, 86R

### **Dentistry, Board of**

Dental assistants/hygienists/anesthesia/analgesia,  
168N, 927R

### **Embalmers/Funeral Directors, Board of**

Continuing education requirements, 1018CR

### **Medical Examiners, Board of**

Licensing and practice, 73R

Licensure physicians/surgeons, 812N

Occupational therapy, continuing education, 976N

Physician assistants, 73R

### **Nursing, Board of**

Advanced practice registered nurses, 815N

Anesthesia, administration of, 169N

Disciplinary/alternative proceedings, 977N

Licensure advanced practice registered nurse,  
408ER, 575N

Nursing practice definitions, 169N

Program closure/reapplication, 980N

### **Physical Therapy Examiners, Board of**

Services without prescription/referral, 441R

### **Psychologists, Board of Examiners of**

Certificate of prescriptive authority, 70R

### **Public Health, Office of**

Lead poisoning prevention program, 981N

Vital records, 616ER

Repeal of emergency rule, 617ER

## **Secretary, Office of the**

### **Health Services Financing, Bureau of**

Adult dentures, 983N

Children's respite care centers, 442R

Durable Medical Equipment Program

Adult Denture Program, 80R

Hyperalimentation therapy, 81R

Reimbursement/prior authorization, 85R

Early and Periodic Screening, Diagnosis

and Treatment Program

Dental services reimbursement, 667R

Early intervention services for infants/toddlers  
with disabilities, 416ER

Health services, 16ER, 664R

Hospital Program transplant services, 667R

Eligibility

Loans/mortgages/promissory notes, 893ER

Health care facilities sanctions, 170N, 831N

Home/Community Based Waiver Program

New opportunities waiver, 617ER

Home Health Program, 984N

Hospital(s)

Disproportionate share hospital

Payment methodologies, 410ER

Licensing standards, 576N

ICF-MR (Intermediate Care Facility-Mentally  
Retarded)

Standards for payment, 171N, 581N, 832N

Mental Health Rehabilitation Program

Provider enrollment moratorium, 668R

Sanctions, 86R

Narcotics and controlled substances, 176N

Nursing Facilities Services

Reimbursement methodology, 837N

Pharmacy Benefits Management Program

Erectile dysfunction drugs, 669R

Narcotics/controlled substances, 931R

Reimbursement methodology, 1004N

Professional Services Program

Circumcision reimbursement termination, 177N,  
931R

Nurse practitioners/midwives/clinical specialists,  
838N

Physician assistants, 839N

Physician services

Reimbursement increase, 178N, 931R

Supplemental payment, 894ER

Prosthetics/Orthotics, 1007N

Substance abuse/addiction treatment facilities

Licensing, 669R

Targeted case management, 417ER

Third party liability, newborn notification, 582N

Urine drug screening labs, 584N

### **Veterinary Medicine, Board of**

Board nominations, 378P

Corporations, 928R

Dentists, registered equine, 930R

Limited liabilities, 928R

Partnerships, 928R

Professional conduct, 928R

Wellness clinic, 892ER

## INSURANCE

### Commissioner, Office of the

Continuing education, 584N  
Domestic insurer, 589N  
Limited licensing for motor vehicle rental companies, 179N, 932R  
Long-term care insurance, 461R  
Military personnel, 673R  
Newborn children dependent coverage, 586N

## LABOR

### Workers' Compensation, Office of

Medical reimbursement schedule, 182N

## LEGISLATION

### House of Representatives

#### House Concurrent Resolution Number 56 of the 2004 Regular Session

Embalmers and funeral directors continuing education requirements, 1018CR

### Senate

#### Senate Committee on Agriculture, Forestry, Aquaculture and Rural Development

Petroleum products, 1017CR

## NATURAL RESOURCES

### Conservation, Office of

Orphaned oilfield sites, 378P, 605P  
Pipeline safety  
Hazardous liquids, 675R  
Natural gas, 679R  
Statewide Order 2-B, receiving waste, 1009N

### Secretary, Office of the

Fisherman's Gear Compensation Fund,  
Loran coordinates 605P, 874P  
Home energy rater training, 934R

## PUBLIC SAFETY AND CORRECTIONS

### Correction Services, Office of

Adult/Juvenile services, 594N  
Air traffic, attorney visits, inmate marriage, 594N  
Board, classification/reclassification, 937R  
Contraband, 937R  
Medical Reimbursement Plan, 597N  
Labor, student and inmate, 937R  
Medical parole, 937R  
Nepotism, 937R  
Offenders, release/placement/transfer, 937R  
Prohibitive behaviors, 19ER, 597N  
Public Information Program, 597N  
Visitation/Visitors, 937R  
Work release, 937R

## Gaming Control Board

Electronic gaming devices, 360N, 840N

## Motor Vehicles, Office of

License plates, international registration, 842N

## Private Security Examiners, Board of

Licensure/Training, 1010N

## State Police, Office of

Hazardous materials, 693R  
Ignition interlock devices, 365N, 938R

## REVENUE

### Alcohol and Tobacco Control, Office of

Malt beverage industry, 843N  
Responsible Vendor Program, 938R  
Self-service checkout, 895ER  
Tobacco permits, importation, 1011N

### Policy Services Division

Corporation franchise tax, 90R, 696R  
Corporation income tax, 694R  
Natural gas severance tax rate, 1029P  
Sales/Use tax

#### Collector's authority

to determine tax, 88R  
to examine records, 89R

#### Dealers required to keep records, 90R

Electronic funds transfer, 483R

Exclusion machinery, 697R

#### Exemptions

Admissions to entertainment, 88R

Lease/rental tax, helicopters, 91R

Little theatre tickets, 92R

Mardi Gras specialty items, 93R

Motion picture film rental, 93R

Nonprofit organizations, 94R

Pesticides used for agricultural purposes, 95R

Property purchased outside the state, 95R

Property used in interstate commerce, 97R

Seeds used in planting crops, 99R

Tickets to musical performances, 99R

#### Failure to pay tax

Grounds for attachment, 91R

Rule to cease business, 92R

#### Nonresident contractors, 94R

Sales returned to dealer; credit/refund of tax, 97R

Sales tax refund for loss by natural disaster, 98R

Sales tax return reporting format, 601N

Sellers of taxable goods and services, 599N, 600N

Signature alternative for preparers, 699R

Termination or transfer of a business, 100R

Wholesalers/Jobbers recordkeeping, 100R

### Tax Commission

Ad valorem taxation, 699R

Timber stumpage values, 376P

## **SOCIAL SERVICES**

### **Community Services, Office of**

Annual progress and services report, 1029P  
Block grant intended use report, 874P  
Child and family services plan, 1029P  
Daycare reimbursement rates, 101R  
Developmental/Socialization Program, 484R  
Louisiana's Emergency Shelter Grants Program 2005  
  Anticipated funds availability, 378P  
Reports/Investigations information maintenance,  
  845N  
State central registry, 846N

### **Family Support, Office of**

CCAP Immunization/age verification, 101R  
Combat pay, 896ER  
Earned Income Tax Credit (EITC) Program, 619ER  
FITAP Disability definition/time limits, 102R  
Food Stamp Program  
  Utility allowance, 417ER, 847N  
SES Judicial suspension of licenses, 366N, 875P  
STEP Program, 102R  
TANF initiatives, 19ER  
  Adoptions, amendments, repeals, 484R  
  Caseload reduction report, 605P  
  Developmental/Socialization Program, 488R  
  Earned income credit program, 1013N

## **TRANSPORTATION AND DEVELOPMENT**

### **Highways/Engineering, Office of**

Outdoor advertising, control of, 380P, 727R,  
  849N, 944R  
Pipe bursting/crushing, 105R  
Public Works compilation, LAC 56:I and III, 942R  
Vegetation visibility permits, 104R

## **TREASURY**

### **Louisiana State Employees' Retirement System**

Deferred Retirement Option Plan (DROP)  
  Interest, 22ER, 368N, 946R  
Electronic funds transfer waiver, 1014N  
Emergency refunds, 107R  
Trustee candidate nominating petitions, 368N, 946R

## **WILDLIFE AND FISHERIES**

### **Aquatic Invasive Species Task Force**

State management plan, 380P

### **Wildlife and Fisheries Commission**

Abandoned crab traps, removal, 108R  
Exotic fish, 728R  
King mackerel, 23ER  
Licenses, special and fee waivers, 369N  
Oyster  
  lessee, 864N  
  season closure, 897ER  
Red snapper, 23ER  
Reef fish, 24ER  
Resident game hunting, 867N  
Shrimp  
  Closure, 25ER  
  Fall, Zone 1, 23ER  
  Freshwater, commercial harvest, 947R  
  Season outside waters, 897ER  
Snake possession permit, 1015N  
Toledo Bend Reciprocal Agreement, 948R  
WMA hunting, 850N