**CONTENTS** **January 2002**




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# Executive Orders

**EXECUTIVE ORDER MJF 01-57**

Governor=s Military Advisory Board

WHEREAS, Executive Order No. MJF 2000-40, issued on October 25, 2000, established the Governor=s Military Advisory Board (hereafter "Board") within the executive department, Office of the Governor; and

WHEREAS, it is necessary to amend Executive Order No. MJF 2000-40 in order to recreate the Board within the executive department, Department of Economic Development, and make ancillary changes to provisions of the executive order;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 1 of Executive Order No. MJF 2000-40, issued on October 25, 2000, is amended to provide as follows:

> The Governor=s Military Advisory Board (hereafter "Board") is recreated within the executive department, Department of Economic Development.

SECTION 2: Section 7 of Executive Order No. MJF 2000-40 is amended to provide as follows:

> Support staff for the Board and facilities for its meetings shall be provided by the Department of Economic Development.

SECTION 3: Section 8 of Executive Order No. MJF 2000-40 is amended to provide as follows:

> 1. Board members shall not receive additional compensation or a per diem from the Department of Economic Development for serving on the Board.
>
> 2. Board members may be reimbursed for actual travel expenses, in accordance with PPM 49, upon approval of the secretary of the Department of Economic Development when funds have been appropriated, and are available, for such purposes.
>
> 3. Board members who are also members of the Louisiana Legislature may seek a per diem from the House of Representatives or the Senate, as appropriate, for their attendance at Board meetings and/or service on the Board.

SECTION 4: All other sections, subsections, and paragraphs of Executive Order No. MJF 2000-40 shall remain in full force and effect.

SECTION 5: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.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 November, 2001.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0201#006

**EXECUTIVE ORDER MJF 01-58**

Rules and Policies on Leave for Unclassified Service

WHEREAS, Executive Order No. MJF 98-23, issued on May 21, 1998, provides for rules and policies on annual, compensatory, sick, special, military, and other leave for certain unclassified state officers and employees;

WHEREAS, Act No. 9 of the 2001 Regular Session of the Louisiana Legislature reorganized the Department of Economic Development and created within that department the Office of Business Development, which is staffed with cluster professionals and service coordinators who are highly skilled, well-educated individuals, with significant experience in a particular area or industry; and

WHEREAS, such professionals will be expected to work long but irregular hours in order to best attract and maintain jobs and businesses in Louisiana;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 2 of Executive Order No. MJF 98-23, issued on May 21, 1998, is amended to read as follows:

> O. "Unclassified appointee," a subclass of officers and employees in the unclassified service of the executive branch, means certain unclassified officers who are appointed
>
> 1) by the governor to serve on the governor=s executive staff, the governor=s cabinet, and the executive staff of the governor=s cabinet, or to serve as the head of a particular agency;
>
> 2) by a cabinet member to serve on the cabinet member=s executive staff;
>
> 3) by the superintendent of the Department of Education to serve on the superintendent=s executive staff;
>
> 4) by an elected official in the executive branch who has adopted the rules and policies set forth in this Order, to serve on the elected official=s executive staff; or

5) by the secretary of the Department of Economic Development to serve in the unclassified service in the Office of Business Development. An unclassified appointee shall be on duty and available to serve and in contact with their appointing authority throughout the term of their appointment except when on leave. An unclassified appointee shall be on leave and/or use annual and/or sick leave or leave without pay only at those times when the appointee is unavailable to serve their appointing authority as a result of voluntary or involuntary conditions; performing political activities during regular tour of duty hours; or performing for compensation non-appointment related activities, duties, or work during regular tour of duty hours. An unclassified appointee shall only accrue sick and annual leave on the basis of a forty (40) hour work week and shall never be eligible to earn compensatory leave, including compensatory leave earned pursuant to subsection 13(c) of this Order.

SECTION 2: All other Sections and Subsections of Executive Order No. MJF 98-23 shall remain in full force and effect.

SECTION 3: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 29th day of November, 2001.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0201#004

**EXECUTIVE ORDER MJF 01-59**

Comprehensive Energy Policy Advisory Commission

WHEREAS, Executive Order No. MJF 2001-49, issued on October 25, 2001, established the Comprehensive Energy Policy Advisory Commission (hereafter "Commission"); and

WHEREAS, it is necessary to amend Executive Order No. MJF 2001-49 in order to make ancillary changes to provisions of the executive order;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 3 of Executive Order No. MJF 2001-49 is amended to provide as follows:

By August 1, 2002, the Commission shall submit to the governor a report on the issues set forth in Section 2 of this Order.

SECTION 2: Section 4 of Executive Order No. MJF 2001-49 is amended to provide as follows:

With the exception of the speaker of the House of Representatives and the president of the Senate, and/or their designees, all members of the Commission shall be appointed by the governor. All non-ex-officio appointees on the Commission shall serve at the pleasure of the governor. The Commission shall be composed of twenty-four (24) members selected as follows:

A. The governor, or the governor=s designee;

B. The speaker of the House of Representative, or the speaker=s designee;

C. The president of the Senate, or the president=s designee;

D. The secretary of the Department of Natural Resources, or the secretary=s designee;

E. The secretary of the Department of Economic Development, or the secretary=s designee;

F. The chair of the State Mineral Board, or the chair=s designee;

G. One (1) member of the Louisiana Public Service Commission, appointed by the governor;

H. Six (6) members with significant experience in private industry in fields relating to the extraction, production, or distribution of energy, appointed by the governor; and

I. Eleven (11) at-large members, appointed by the governor.

SECTION 3: Section 5 of Executive Order No. MJF 2002-49 is amended to provide as follows:

The governor shall appoint the chair and vice-chair of the Commission. All other officers, if any, shall be elected by the membership of the Commission.

SECTION 4: All other sections, subsections, and/or paragraphs of Executive Order No. MJF 2001-49 shall remain in full force and effect.

SECTION 5: 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 7th day of December, 2001.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0201#005

**EXECUTIVE ORDER MJF 01-60**

Administrative Support of the Office of
Louisiana Oil Spill Coordinator

WHEREAS, Executive Order No. MJF 98-42, issued on September 3, 1998, directed the office of the Louisiana oil spill coordinator (hereafter "Office") to be housed within the Department of Natural Resources (hereafter "Department") and ordered the secretary of the Department to supervise the coordination of various activities and operations of the Office and be the appointing authority of various employees in the Office;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Executive Order No. MJF 98-42, issued on September 3, 1998, is rescinded.

SECTION 2: The provisions of this Order are 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 20th day of December, 2001.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0201#003

**EXECUTIVE ORDER MJF 01-61**

Louisiana Commission on Marriage and Family

WHEREAS, Executive Order No. MJF 2001-19, issued on April 6, 2001, established the Louisiana Commission on Marriage and Family (hereafter "Commission"); and

WHEREAS, it is necessary to amend Executive Order No. MJF 2001-19 to increase the membership of the Commission and change the provisions on the annual reporting date and on other ancillary matters;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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: Section 3 of Executive Order No. MJF 2001-19, issued on April 6, 2001, is amended to provide as follows:

> Commencing December 31, 2002, and each December 31st thereafter, the Commission shall submit a detailed annual report to the governor which addresses the issues set forth in Section 2 of this Order.

SECTION 2: Section 4 of Executive Order No. MJF 2001-19 is amended to provide as follows:

> With the exception of the members of the Louisiana Legislature, all members of the Commission shall be appointed by the governor. All non-ex-officio members shall serve at the governor's pleasure. The Commission shall consist of a maximum of thirty (30) members selected as follows:
>
> A. The governor, or the governor's designee;
>
> B. The secretary of the Department of Social Services, or the secretary's designee;
>
> C. The secretary of the Department of Health and Hospitals, or the secretary's designee;
>
> D. The secretary of the Department of Labor, or the secretary's designee;
>
> E. The commissioner of higher education, or the commissioner's designee;
>
> F. The superintendent of the Department of Education, or the superintendent's designee;
>
> G. The executive director of the Children's Cabinet, Office of the Governor, or the executive director's designee;
>
> H. The executive director of the Office of Women's Services, Office of the Governor, or the executive director's designee;
>
> I. The TANF (Temporary Assistance for Needy Families) director, Division of Administration;
>
> J. Two (2) members of the Senate, nominated by the president of the Senate;
>
> K. Two (2) members of the House of Representatives, nominated by the speaker of the House of Representatives;
>
> L. A representative of the Louisiana Coordinating Council on Domestic Violence;
>
> M. A representative of the Louisiana Women's Policy and Research Commission;
>
> N. A member of the Board of Elementary and Secondary Education;
>
> O. A citizen of the state of Louisiana representing the interests and concerns of two-parent families;
>
> P. A citizen of the state of Louisiana representing the interests and concerns of single-parent families; and
>
> Q. Twelve (12) citizens of the state of Louisiana who have significant academic and/or professional expertise in one (1) or more of the following areas:
>
> 1. marriage education and/or marriage skills training;
>
> 2. marriage, family and/or juvenile counseling and/or mediation;
>
> 3. education;
>
> 4. law;
>
> 5. public health;
>
> 6. sociology, social science, and/or social work; and
>
> 7. community programs and/or assistance.

SECTION 3: Section 5 of Executive Order MJF 2001-19 is amended to provide as follows:

The governor shall appoint the co-chairs of the Commission. All other officers, if any, shall be elected by the membership of the Commission.

SECTION 4: All other paragraphs, sections, and subsections of Executive Order No. MJF 2001-19 shall remain in full force and effect.

SECTION 5: 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 20th day of December, 2001.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0201#002

**EXECUTIVE ORDER MJF 01-62**

Carry-Forward 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 (collectively hereafter "the Act"), Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, (hereafter collectively "MJF 96-25") was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2001 (hereafter "the 2001 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2001 Ceiling; and

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

WHEREAS, Executive Order No. MJF 2001-17, issued on March 27, 2001, as amended by Executive Order No. MJF 2001-25, issued on June 6, 2001, allocated twenty-one million dollars ($21,000,000) from the 2001 Ceiling to the Industrial Development Board of the city of New Orleans, Louisiana, Inc., in connection with a project of CSI Rental, L.L.C., but the twenty-one million dollar ($21,000,000) allocation has been returned unused to the 2001 Ceiling;

WHEREAS, Executive Order No. MJF 2001-27, issued on June 26, 2001, as amended by Executive Order No. MJF 2001-38, issued on September 14, 2001, allocated eight hundred fifty thousand dollars ($850,000) from the 2001 Ceiling to the Louisiana Local Government Environmental Facilities and Community Development Authority in connection with a project of Independence Street Apartments, but the eight hundred fifty thousand dollar ($850,000) allocation has been returned unused to the 2001 Ceiling;

WHEREAS, Executive Order No. MJF 2001-29, issued on July 31, 2001, as amended by Executive Order No. MJF 2001-48, issued on October 25, 2001, allocated ten million dollars ($10,000,000) from the 2001 Ceiling to the Louisiana Local Government Environmental Facilities and Community Development Authority in connection with a project of Quantum Fuel and Refining, Inc., but the ten million dollar ($10,000,000) allocation has been returned unused to the 2001 Ceiling;

WHEREAS, Executive Order No. MJF 2001-43, issued on September 25, 2001, allocated three million six hundred thousand dollars ($3,600,000) from the 2001 Ceiling to the Industrial Development Board of the city of Donaldsonville, Louisiana, Inc., in connection with a project of Chef John Folse Company, Inc., but the three million six hundred thousand dollar ($3,600,000) allocation has been returned unused to the 2001 Ceiling;

WHEREAS, Executive Order No. MJF 2001-56, issued on November 14, 2001, allocated seven million eight hundred fifty-one thousand dollars ($7,851,000) from the 2001 Ceiling to Louisiana Public Facilities Authority, in connection with a project of Baton Rouge Water Company, but one hundred thirty-one thousand one hundred fifty-three dollars ($131,153) of the seven million eight hundred fifty-one thousand dollar ($7,851,000) allocation has been returned unused to the 2001 Ceiling;

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

WHEREAS, the governor desires to allocate the excess and/or unused amount of the 2001 Ceiling as a carry-forward for a project which is permitted and eligible under the Act;

NOW THEREFORE I, M.J. AMIKE@ FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Pursuant to and in accordance with the provisions of Section 146(f) of the Internal Revenue Code of 1986, as amended, and in accordance with the request for a carry-forward filed by the designated issuer, the excess and/or unissued private activity bond volume limit under the 2001 Ceiling is hereby allocated to the following issuer, for the following carry-forward project, and in the following amount:

| **Issuer** | **Carry-Forward Project** | **Carry-Forward** |
|---|---|---|
| Louisiana Housing Finance Agency | Single Family Mortgage Revenue Bond Program | $35,581,153 |

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

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

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 21st day of December, 2001.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0201#001

# Emergency Rules

**DECLARATION OF EMERGENCY**

**Office of Student Finanical Assistance**
**Student Financial Assistance Commission**

Scholarship/Grant Programs
(LAC 28:IV.301, 703, 705, 803, 805, 903, 907, 911, 1103, 1111, 1903, 2103, 2105, 2107, 2303, 2309)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

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

This declaration of emergency is effective December 18, 2001, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

**Title 28**
**EDUCATION**
**Part IV. Student Financial Assistance C Higher Education Scholarship and Grant Programs**
**Chapter 3. Definitions**
**§301. Definitions**

* * *

*Academic Year (High School)* **C** the annual academic year for high school begins on September 1 of the fall term, includes the winter, spring, and summer terms and ends on the next August 31. This definition is not to be confused with the Louisiana Department of Education's definition of school year, which is found in Louisiana Department of Education Bulletin 741.

* * *

*Skill and Occupational Training* **C** training defined by the Louisiana Board of Regents to be for skill and occupational training. Currently, the Board of Regents defines "skill and occupational training" as follows:

1. any and all certificate, diploma, Associate of Applied Technology, and Associate of Applied Science programs offered by eligible colleges/universities; and

2. any coordinated and comprehensive course of study offered by eligible colleges/universities which qualifies a student upon completion to sit for testing leading to and/or meeting national and/or state professional/occupational licensure and/or certification requirements.

With regard to (1) above, eligible programs must be listed in the Board of Regents Inventory of Degree and Certificate Programs.

With regard to (2) above, submit the Board of Regents form to the Associate Commissioner for Academic Affairs for review and approval of each proposed course of study. Approved courses of study shall be compiled into a registry and reported to the Office of Student Financial Assistance for their use in determining the eligibility of students who apply for TOPS-Tech awards under provisions of this Act. Students enrolled in skills or occupational courses of study not included in the aforementioned registry shall be judged ineligible for TOPS-Tech awards.

* * *

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

HISTORICAL NOTE: Promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November), LR 28:

**Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards**
**§703. Establishing Eligibility**

A. …

1. Be a U. S. citizen, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within 60 days after the date the student attains the age of majority, the student applies to become a citizen of the United States and obtains such citizenship within one year after the date of the application for citizenship. Those students who are eligible for U. S. citizenship and who otherwise qualify for a TOPS award, will continue to satisfy the citizenship requirements for a TOPS award for one year after the date of the student's application for citizenship, at which time, if the student has not provided proof of U.S. citizenship to the Office of Student Financial Assistance, the student's TOPS award will be suspended until such time as proof of citizenship is provided and canceled if such proof is not provided by May 1 of the following Academic Year (College).

2. - 6.c. ...

7. not have a criminal conviction, except for misdemeanor traffic violations, and if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

8. agree that awards will be used exclusively for educational expenses.

B. - G.2. ...

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

HISTORICAL NOTE: Promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602, 1998 (August 2000), LR 26:1996, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), LR 27:1850 (November 2001), LR 28:

**§705. Maintaining Eligibility**

A. - A.2. ...

3. not have a criminal conviction, except for misdemeanor traffic violations and if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

4. agree that awards will be used exclusively for educational expenses; and

5. continue to enroll and accept the TOPS award as a full-time undergraduate student in an Eligible College or University defined in §301, and maintain an enrolled status throughout the academic term, unless granted an exception for cause by LASFAC; and

6. Minimum Academic Progress:

a. in an academic program at an Eligible College or University, by the end of each Academic Year (College), earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or quarter in the Academic Year (College). These hours shall include remedial course work required by the institution, but shall not include hours earned during Qualified Summer Sessions, summer sessions nor intersessions nor by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

b. in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree at an Eligible College or University, maintain Steady Academic Progress as defined in §301 and by the end of the spring term, earn a cumulative college grade point average of at least 2.50 on a 4.00 maximum scale. Unless granted an exception for cause by LASFAC, failure to maintain Steady Academic Progress and to earn a 2.50 at the conclusion of the spring term will result in permanent cancellation of the recipient's eligibility; and

7. maintain Steady Academic Progress as defined in §301; and

8. maintain at an Eligible College or University, by the end of the spring semester, quarter, or term, a cumulative college grade point average (GPA) on a 4.00 maximum scale of at least:

a. a 2.30 with the completion of less than 48 credit hours, a 2.50 after the completion of 48 credit hours, for continuing receipt of an Opportunity Award, if enrolled in an academic program; or

b. a 2.50, for continuing receipt of an Opportunity Award, if enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree; and

c. a 3.00 for continuing receipt of either a Performance or Honors Award; and

9. has not enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree after having received a vocational or technical education certificate or diploma, or a non-academic undergraduate degree; and

10. has not received a baccalaureate degree; and

11. has not been enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree for more than two years.

B. - D. ...

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

HISTORICAL NOTE: Promulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999); LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26, 1996, 2001 (September 2000), LR 27:1853 (November 2001), LR 28:

## Chapter 8. TOPS-TECH Award

**§803. Establishing Eligibility**

A. To establish eligibility for the TOPS-TECH Award, the student applicant must meet the following criteria:

1. be a U. S. citizen, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within 60 days after the date the student attains the age of majority, the student applies to become a citizen of the United States and obtains such citizenship within one year after the date of the application for citizenship. Those students who are eligible for U. S. citizenship and who otherwise qualify for a TOPS award, will continue to satisfy the citizenship requirements for a TOPS award for one year after the date of the student's application for citizenship, at which time, if the student has not provided proof of U.S. citizenship to the Office of Student Financial Assistance, the student's TOPS award will be suspended until such time as proof of citizenship is provided and canceled if such proof is not provided.

A.2. - 6.a.i. ...

ii. For students graduating in the 2000-2001 school year and thereafter, the high school course work constituting the following TOPS-TECH core curriculum:

Core Curriculum -TOPS-TECH Award

| Units | Course |
|---|---|
| 1 | English I |
| 1 | English II |
| 1 | English III |
| 1 | English IV or substitute one unit of Business English. |
| 1 | Algebra I; or both Algebra I, Part 1 and Algebra I, Part 2; or both Applied Mathematics I and Applied Mathematics II. |
| 2 | Geometry, Applied Mathematics III, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Discrete Mathematics, or Probability and Statistics (two units). Integrated Mathematics I, II, and III may be substituted for Algebra I, Geometry and Algebra II, and shall be considered the equivalent of the three required math units. |
| 1 | Biology. |
| 1 | Chemistry or Applied Chemistry. |
| 1 | Earth Science, Environmental Science, Physical Science, Integrated Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology. |
| 1 | American History. |
| 1 | World History, Western Civilization, or World Geography. |
| 1 | Civics and Free Enterprise (one unit combined) or Civics (one unit, nonpublic). |

Remaining core courses shall be selected from one of the following options:

| | |
|---|---|
| OPTION 1 | Total of 17 units. |
| 1 | Fine Arts Survey or substitute two units of performance courses in music, dance, or theater; or substitute two units of visual art courses; or substitute two units of studio art courses; or a course from the career and technical program of studies that is approved by the BESE (must be listed under the Vocational Education Course Offerings in Bulletin 741 or the updates to Bulletin 741); or substitute one unit as an elective from among the other subjects listed in this core curriculum. |
| 2 | Foreign Language, Technical Writing, Speech I or Speech II. |
| 1 | One unit from the secondary computer education program of studies that is approved by the BESE. |
| OR | |
| OPTION 2 | Total of 19 Units |
| 4 | In a career major comprised of a sequence of related specialty courses. In order for a student to use this option, the courses for the career major must be approved by BESE. |
| 1 | Credit in a basic computer course. |
| 1 | In related or technical fields. A related course includes any course which is listed under the student's major. A technical course is one that is listed in the approved career option plan for the high school at which the course is taken. |

or

iii. ...

A.6.b.-A.8. ...

9. not have a criminal conviction, except for misdemeanor traffic violations, and if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

10. agree that awards will be used exclusively for educational expenses.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:1898 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65, 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), LR 27:1854 (November 2001), LR 28:

**§805. Maintaining Eligibility**

A. - A.2. ...

3. not have a criminal conviction, except for misdemeanor traffic violations and if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

4. agree that awards will be used exclusively for educational expenses; and

5. continue to enroll and accept the TECH award as a full-time student in an eligible college or university defined in §301, and maintain an enrolled status throughout the school term, unless granted an exception for cause by LASFAC; and

6. has not received a vocational or technical education certificate or diploma, or a non-academic undergraduate degree, or a baccalaureate degree; and

7. has maintained Steady Academic Progress as defined in §301; and

8. maintain, by the end of the spring term, a cumulative college grade point average of at least 2.50 on a 4.00 maximum scale.

B. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:

**Chapter 9. TOPS Teacher Award**

**§903. Establishing Eligibility**

A. - A.5. ...

6. not have a criminal conviction, except for misdemeanor traffic violations; and

7. agree that the award will be used exclusively for educational expenses; and

8. enroll during the fall term at an eligible college or university, as defined in §1901, as a full-time student, as defined in §301, in a degree program or course of study leading to a degree in education or an alternative program leading to regular certification as a teacher at the elementary or secondary level in mathematics or chemistry.

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

HISTORICAL NOTE: Promulgated LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000), LR 26:2269 (October 2000), LR 27:284 (March 2001), LR 27:1220 (August 2001), repromulgated LR 27:1857 (November 2001), amended LR 28:, LR 28:

**§907. Maintaining Eligibility**

A. - A.7. ...

8. have no criminal convictions, except for misdemeanor traffic violations.

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

HISTORICAL NOTE: Promulgated LR 24:638 (April 1998), amended LR 24:1907 (October 1998), LR 25:1092 (June 1999), LR 26: (January 2000), LR 26: (April 2000), repromulgated LR 27:1857 (November 2001), amended LR 28:

**§911. Discharge of Obligation**

A. - C.1. ...

2. interest on each disbursement will accrue from the date of entering repayment status until repaid, canceled or fulfilled;

C.3. - D. 2. ...

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

HISTORICAL NOTE: Promulgated LR 24:638 (April 1998), amended LR 24:1907 (October 1998), amended LR 26:69 (January 2000), LR 26:1603 (August 2000), LR 27:1858 (November 2001), LR 28:

**Chapter 11. Rockefeller State Wildlife Scholarship**

**§1103. Establishing Eligibility**

A. To establish eligibility, the student applicant must meet all of the following criteria:

1. - 4. ...

5. not have a criminal conviction, except for misdemeanor traffic violations; and

6. agree that award proceeds will be used exclusively for educational expenses; and

7. be enrolled or accepted for enrollment as a full-time undergraduate or graduate student at a Louisiana public college or university majoring in forestry, wildlife or marine science, with the intent of obtaining a degree from a Louisiana public college or university offering a degree in one of the three specified fields; and

8. a. must have graduated from high school, and if at the time of application the student applicant has earned less than 24 hours of graded college credit since graduating from high school, have earned a minimum cumulative high school grade point average of at least 2.50 calculated on a 4.00 scale for all courses completed in grades 9 through 12 and have taken the ACT or SAT and received test score results; or

b. if, at the time of application, the student applicant has earned 24 or more hours of college credit, then the applicant must have at least a 2.50 cumulative college grade point average.

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

HISTORICAL NOTE: Promulgated LR 24:639 (April 1998), amended LR 24:1908 (October 1998), LR 27:1220 (August 2001), repromulgated LR 27:1859 (November 2001), amended LR 28:

**§1111. Discharge of Obligation**

A. - C.1. ...

2. interest on each disbursement will accrue from the date of entering repayment status until repaid, canceled or fulfilled;

C.3. - D. 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated LR 24:640 (April 1998), amended LR 24:1909 (October 1998), repromulgated LR 27:1860 (November 2001), amended LR 28:

**Chapter 19. Eligibility and Responsibilities of Postsecondary Institutions**

**§1903. Responsibilities of Postsecondary Institutions**

A. - B.1. ...

2. institutions will bill LASFAC based on their certification that the recipient of a TOPS Award is enrolled full-time, as defined in §301, at the end of the fourteenth class day for semester schools and the ninth class day for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the full summer session). Institutions shall not bill for students who are enrolled less than full-time at the end of the fourteenth class day for semester schools or the ninth class day for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the summer session), unless the student qualifies for payment for less than full-time enrollment as defined in §2103.C. Students failing to meet the full-time enrollment requirement are responsible for reimbursing the institution for any awards received. Refunds of awards to students who are not receiving federal Title IV aid, for less than full-time enrollment after the fourteenth or ninth class day the fourteenth or ninth class day, as applicable, shall be returned to the state. Refunds to students who are receiving federal Title IV aid shall be refunded to the state in accordance with the institution's federal Title IV aid refund procedures; and

B.3. - D.2. ...

3. release award funds by crediting the student's account within 14 days of the institution's receipt of funds or disbursing individual award checks to recipients as instructed by LASFAC. Individual award checks for the Rockefeller State Wildlife Scholarship, and TOPS Teacher Award must be released to eligible recipients within 30 days of receipt by the school or be returned to LASFAC.

E. - E.2. ...

3. cumulative grade point average; and

4. upon graduation, degree date and type and name of degree.

F. - G. ...

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

HISTORICAL NOTE: Promulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998, 2002 (September 2000), LR 27:1864 (November 2001), LR 28:

**Chapter 21. Miscellaneous Provisions and Exceptions**

**§2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements**

A. - B. ...

C. Less Than Full-Time Attendance. LASFAC will authorize awards under the TOPS Opportunity, Performance, Honors and Teachers Awards, the TOPS-TECH Award and the Rockefeller State Wildlife Scholarship, for less than full-time enrollment provided that the student meets all other eligibility criteria and at least one of the following:

1. - 3. ...

D. Procedure for Requesting Exceptions to the Initial and Continuous Enrollment Requirement

1. The student should complete and submit an application for an exception, with documentary evidence, to the Office as soon as possible after the occurrence of the event or circumstance that supports the request. Through the 2000-2001 academic year, the student must submit application for an exception no later than May 30 of the academic year the student requests reinstatement. Commencing with the 2001-2002 academic year, the student must submit the application for exception no later than six months after the date of the notice of cancellation. The deadline for filing the exception shall be prominently displayed on the notice of cancellation.

2. - 3. ...

E. Qualifying Exceptions to the Initial and Continuous Enrollment Requirement

1. A student who has been declared ineligible for TOPS, TOPS-Tech, TOPS Teacher or the Rockefeller State Wildlife Scholarship because of failure to meet the initial or continuous enrollment requirements may request reinstatement in that program based on one or more of the following exceptions:

E.1. - 11.a.i.(f). ...

(g). Claims of receipt of advice that is contrary to these rules, public information promulgated by LOSFA, award letters, and the Rights and Responsibilities document that detail the requirements for full-time continuous enrollment.

E.11.a.i.(h). - E.11.c. ...

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

HISTORICAL NOTE: Promulgated LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1017 (May 2000), LR 26:2004 (September 2000), LR 27:37 (January 2001), LR 27:1875 (October 2001), LR 27:1866 (November 2001), LR 28:

**§2105. Repayment Obligation, Deferment and Cancellation**

A. ...

B. Deferment of Repayment Obligation. Recipients of the Rockefeller State Wildlife Scholarship or TOPS Teacher Award who are in repayment status may have their payments deferred for the following reasons.

1. Parental Leave

a. Definition. The recipient is pregnant or caring for a newborn or newly-adopted child less than one year of age.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form, and

ii. a written statement from a doctor of medicine who is legally authorized to practice certifying the date of diagnosis of pregnancy and the anticipated delivery date or the actual birth date or a copy of the hospital's certificate of live birth or a copy of the official birth certificate or equivalent official document or written documentation from the person or agency completing the adoption that confirms the adoption and date of adoption.

c. Maximum length of deferment**C**up to one year per child.

2. Physical Rehabilitation Program

a. Definition. The recipient is receiving rehabilitation in a program prescribed by a qualified medical professional and administered by a qualified medical professional.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form including the reason for the rehabilitation, dates of absence from work, the number of days involved, and any other information or documents, and

ii. a written statement from a qualified medical professional describing the rehabilitation, including the diagnosis, the beginning date of the rehabilitation, the required treatment, and the length of the recovery period.

c. Maximum Length of Deferment. Up to two years per occurrence.

3. Substance Abuse Rehabilitation Program

a. Definition. The recipient is receiving rehabilitation in a substance abuse program prescribed by a qualified professional and administered by a qualified professional.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form, the reason for the rehabilitation, dates of absence from work, the number of days involved, and any other information or documents, and

ii. a written statement from a qualified professional describing the rehabilitation, including the diagnosis, the beginning date of the rehabilitation, the required treatment, and the length of the recovery period.

c. Maximum Length of Deferment. Up to one year. This deferment shall be available to a recipient only one time.

4. Temporary Disability

a. Definition. The recipient is recovering from an accident, injury, illness or required surgery, or the recipient is providing continuous care to his/her spouse, dependent, parent, stepparent, or guardian due to an accident, illness, injury or required surgery.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form, the reason for the disability, dates of absence from work, the number of days involved, and any other information or documents, and

ii. a written statement from a qualified professional of the existence and of the accident, injury, illness or required surgery, including the dates of treatment, the treatment required, the prognosis, the length of the recovery period, the beginning and ending dates of the doctor's care, and opinions as to the impact of the disability on the recipient's ability to work; and

iii if a temporary disability of another, a statement from the family member or a qualified professional confirming the care given by the recipient.

c. Maximum Length of Deferment. Up to two years for recipient; up to a maximum of one year for care of a disabled dependent, spouse, parent, or guardian.

5. Religious Commitment

a. Definition. The recipient is a member of a religious group that requires the recipient to perform certain activities or obligations which necessitate taking a leave of absence from work.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form, the number of days involved, and the length of the religious obligation, and

ii. a written statement from the religious group's governing official evidencing the requirement necessitating the leave of absence including dates of the required leave of absence.

c. Maximum Length of Deferment. Up to four consecutive semesters (six consecutive quarters).

6. Military Service

a. Definition. The recipient is in the United States Armed Forces Reserves and is called on active duty status or is performing emergency state service with the National Guard.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form and the length of duty (beginning and ending dates), and

ii. a written certification from the commanding officer or regional supervisor including the dates and location of active duty, or

iii. a certified copy of the military orders.

c. Maximum Length of Deferment. Up to the length of the required active duty service period.

7. Recipient is engaging in a full-time course of study at an institution of higher education at the baccalaureate level or higher; or

8. Recipient is:

a. seeking and unable to find full-time employment for a single period not to exceed 12 months; or

b. seeking and unable to find full-time teaching employment at a qualifying Louisiana school for a period of time not to exceed 27 months.

C. A recipient who receives a deferment under §2105.B.7 and who is not able to enroll full-time due to a circumstance listed in §2103.E may request an exception to the full-time enrollment requirement of the deferment based on that circumstance. The maximum length of the continuation of the exception shall be the maximum length of exception provided by §2103.E.

D. Procedure for Requesting a Deferment

1. The recipient should complete and submit an application for a deferment, with documentary evidence, to the Office as soon as possible after the occurrence of the event or circumstance that supports the request. The recipient must submit the application for deferment no later than three months after the date of the notice of repayment. The deadline for filing the request shall be prominently displayed on the notice of repayment.

2. If determined eligible for a deferment, the recipient will be notified of the length of the deferment and of any conditions of the deferment.

E. Conditions of Deferment

1. Deferments may be subject to the following conditions:

a. Related to the particular circumstances for which the deferment is granted, including, but not limited to, providing proof of enrollment.

b. Agreement to give notice that the condition or circumstance that warranted the deferment has ceased,

c. Agreement to a repayment schedule commencing on expiration of the deferment,

d. Agreement to acknowledge debt,

e. Agreement that during the deferment period, prescription will be interrupted (meaning the period of time within which the Office has to enforce the promissory note will not continue to accrue), and/or

f. Agreement to start repayment at the end of the deferment.

2. Conditions for deferments must be included in the notice of deferment.

F. The recipient must sign a written acknowledgment of receipt of the notice of deferment and acceptance of all conditions. The recipient must return the signed acknowledgment and acceptance within 30 days of the date of the notice, otherwise the deferment is void and repayment shall commence.

G. Cancellation of Repayment Obligation. Upon submission of applicable proof, loans may be canceled for the following reasons:

1. death of the recipient;

2. complete and permanent disability of the recipient which precludes the recipient from gainful employment.

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

HISTORICAL NOTE: Promulgated LR 24:649 (April 1998), amended LR 24:1918 (October 1998), LR 26:1603 (August 2000), repromulgated LR 27:1868 (November 2001), amended LR 28:

**§2107. Funding and Fees**

A. - A.2. ...

B. Less than Full-Time Attendance. The LASFAC will authorize awards under the TOPS Opportunity, Performance, Honors and Teachers Awards for less than full-time enrollment provided that the student meets all other eligibility criteria and the requirements of §2103.C.

C. - E. ...

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

HISTORICAL NOTE: Adopted by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17: 959 (October 1991), amended LR 22:338 (May 1996), LR 23:1648 (December 1997). Promulgated LR 24:649 (April 1998), amended LR 24:1919 (October 1998), LR 26:1998 (September 2000), repromulgated LR 27:1869 (November 2001), amended LR 28:

## Chapter 23. Tuition Payment Program for Medical School Students

**§2303. Establishing Eligibility**

A.- A.5. ...

6. To establish eligibility, the student applicant must meet all of the following criteria:

7. not have a criminal conviction, except for misdemeanor traffic violations; and

8. agree that the award will be used exclusively for educational expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1461 (August 1999) LR 25:2177 (November 1999), LR 26:2754 (December 2000), LR 27:1220 (August 2001), repromulgated LR 27:1872 (November 2001), amended LR 28:

**§2309. Maintaining Eligibility**

A.- A.4. ...

5. have no criminal convictions, except for misdemeanor traffic violations.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1462 (August 1999), repromulgated LR 27:1873 (November 2001), LR 28:

George Badge Eldredge
General Counsel

0201#007

## DECLARATION OF EMERGENCY

### Office of Student Financial Assistance
### Tuition Trust Authority

Student Tuition and Revenue Trust (START Saving) Program (LAC 28:VI.107, 301, 303, 307, 311, 313)

The Louisiana Tuition Trust Authority (LATTA) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091-3099.2).

The emergency rules are necessary to allow the Louisiana Office of Student Financial Assistance to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The authority has, therefore, determined that these

emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective December 18, 2001, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

**Title 28**
**EDUCATION**
**Part VI. Student Financial Assistance C Higher Education Savings**
**Chapter 1. General Provisions**
**Subchapter A. Student Tuition Trust Authority**
**§107. Applicable Definitions**

* * *

*Legal Entity***C** juridical persons including, but not limited to, groups, trusts, estates, associations, organizations, partnerships, and corporations that are incorporated, organized, established or authorized to conduct business in accordance with the laws of one or more states or territories of the United States. A natural person is not a legal entity.

* * *

*Louisiana Resident***C**

1. - 4. ...

5. a legal entity that is incorporated, organized, established or authorized to conduct business in accordance with the laws of Louisiana or registered with the Louisiana Secretary of State to conduct business in Louisiana and has a physical place of business in Louisiana.

* * *

*Qualified Higher Education Expenses***C**

1. tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated Beneficiary at an eligible institution of postsecondary education; and

2. room and board; and

3. expenses for special needs services in the case of a special needs beneficiary, which are incurred in connection with such enrollment or attendance.

* * *

*Room and Board***C** qualified Room and Board costs include the reasonable cost for the academic period incurred by the designated beneficiary for room and board while attending an eligible educational institution on at least a half time basis, not to exceed the maximum amount included for room and board for such period in the cost of attendance (as currently defined in §472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll) as determined by the eligible educational institution for such period, or if greater, the actual invoice amount the student residing in housing owned or operated by the eligible education institution is charged by such institution for room and board. Room and board are only qualified higher education expenses for students who are enrolled at least half time.

* * *

*Special Needs Services and Beneficiary***C** services provided to a Beneficiary because the student has one or more disabilities.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:

**Chapter 3. Education Savings Account**
**§301. Education Savings Accounts**

A. - C.3. ...

4. Transfer of account ownership is not permitted, except in the case of the death of an account owner if a natural person or the dissolution of the account owner, if a legal entity.

a. The account owner who is a natural person may designate a person who will become the substitute account owner in the event of the original account owner=s death.

b. ...

c. In the event of the death of an Account Owner who is a natural person and who has not been named a substitute account owner, the account shall be terminated and the account shall be refunded to the beneficiary, if designated to receive the refund by the account owner, or the account owner=s estate.

d. In the event of the dissolution of an account owner who is a legal entity, the beneficiary shall become the substitute account owner. If the account owner is dissolved, the beneficiary designated to receive the refund has died, and there is no substitute beneficiary named, the refund shall be made to the beneficiary=s estate.

5. Only the account owner or the beneficiary may be designated to receive refunds from the account owned by an account owner who is a natural person. in the event of the death of the account owner when the account owner is designated to receive the refund and there is no substitute account owner named, the refund shall be made to the account owner=s estate.

D.1 - 6.c. ..

7. That an account owned by an account owner who is a legal entity cannot be terminated by the legal entity and the funds deposited in the account will not be refunded to the account owner.

8. That an account owner who is a legal entity can change the beneficiary of an account to one or more persons who are not members of the family of the beneficiary, however, in such case:

a. these transfers may be treated as refunds under federal and state tax laws in which case the account owner will be subject to any associated tax consequences; and

b. the earnings enhancements and interest thereon will not be transferred to the new beneficiary. (Note that the deposit(s) will be eligible for earnings enhancement for the year of the deposit.)

9. That in the event an account owner who is a legal entity is dissolved, the beneficiary will become the owner of the account.

E. - E.2. ...

F. Citizenship Requirements. Both an account owner who is not a legal entity and the beneficiary must meet the following citizenship requirements:

F.1. - H.1.e. ...

2. By signing the owner=s agreement, the account owner who is classified in §303.A.1 or 2 (does not include legal entities) provides written authorization for the LATTA to access his annual tax records through the Louisiana Department of Revenue, for the purposes of verifying federal adjusted gross income.

3. By signing the owner=s agreement,

a. the account owner who is a natural person certifies that:

i. both account owner and beneficiary are United States Citizens or permanent residents of the United States as defined by the U.S. Immigration and Naturalization Service (INS) and, if permanent residents have provided copies of INS documentation with the submission of the application and owner=s agreement, and

ii. the information provided in the application is true and correct.

b. the person signing on behalf of an account owner who is a legal entity certifies that:

i. the account owner is a legal entity as defined in rule and the application;

ii. he or she is the designated agent of the legal entity;

iii. he or she is authorized to take any action permitted the account owner;

iv. the account owner acknowledges and agrees that once funds are deposited in a START account, neither the deposits nor the interest earned thereon can be refunded to the account owner,

v. the information provided in the application is true and correct, and

vi. if the beneficiary is not a Louisiana resident, the legal entity fulfills the definition of Louisiana resident as found in rule and the application.

4. Social security numbers and federal and state employer identification numbers will be used for purposes of federal and state income tax reporting and to access individual account information for administrative purposes (see §3150).

I. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:713 (June 1997), amended LR 24:436 (March 1998), LR 24:1269 (July 1998), LR 25:1794 (October 1999), LR 26:2262 (October 2000), LR 27:1878 (November 2001), LR 28:

**§303. Account Owner Classifications**

A. - B. ...

C. Account owner classification is made at the time of the initiation of the agreement. Changes in the residency of the account owner or beneficiary after the initiation of the agreement do not change the account owner=s classification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 27: 1879 (November 2001), amended LR 28:

**§307. Allocation of Earnings Enhancements**

A. - A.2. ...

B. Providing Proof of Annual Federal Adjusted Gross Income

1. For Account Owners who are classified in §303.A.1 or 2 (does not include Legal Entities), the Account Owner's annual federal adjusted gross income for the year immediately preceding the year for which the Beneficiary of the account is being considered for an earnings enhancement is used in computing the annual earnings enhancement allocation.

2.- 2.b. ...

3. In completing the owner=s agreement, account owner's who are classified in §303.a.1 or 2 (does not include legal entities), authorize the LATTA to access their records with the Louisiana Department of Revenue for the purpose of verifying the Account Owners= federal adjusted gross income. In the event the Account Owners do not file tax information with the Louisiana Department of Revenue, they must provide the LATTA with:

3.a. - G.1. ...

2. have an Account Owner who falls under one of the classifications described in §303.A.1, 2, or 3.

H. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997),amended LR 24:1271 (July 1998), LR 25:1794 (October 1999), LR 26:1263 (June 2000), LR 26:2263 (October 2000), LR 27:37 (January 2001) LR 27:1222 (August 2001), LR 27:1880 (November 2001), LR 28:

**§311. Termination and Refund of an Education Savings Account**

A. - A.3. ...

B. Account Terminations

1. The account owner who is a natural person may terminate an account at any time.

2.- 5. ...

6. The account owner who is a Legal Entity may not terminate an account, except in accordance with §311.F, however, the account owner who is a legal entity may designate a substitute beneficiary in accordance with §313.F.

C.- C.2. ...

3. No refunds shall be made to an account owner who is a legal entity. If an account owned by a legal entity is terminated by LATTA or the account owner in accordance with §311.F, the refund will be made to the beneficiary or to the beneficiary=s estate if no substitute beneficiary has been designated by the account owner.

D. Designation of a Refund Recipient

1. In the owner=s agreement, the account owner who is a natural person may designate the Beneficiary to receive refunds from the account.

D.2.-3. ...

4. The beneficiary of an account owned by a legal entity is automatically designated as the refund recipient.

E. - E.3. ...

F. Voluntary termination or partial refund of an account without penalty prior to January 1, 2002. No penalty will be assessed for accounts which are terminated and fully refunded or partially refunded at the request of the Account Owner prior to January 1, 2002 due to the following reasons:

1. the death of the beneficiary; the refund shall be equal to the redemption value of the account and shall be made to:

a. the account owner, if the account owner is a natural person; or

b. the beneficiary=s estate, if the account owner is a legal entity.

2. the disability of the beneficiary; the refund shall be equal to the redemption value of the account and shall be made to:

a. the account owner or the beneficiary, as designated in the owner=s agreement, if the account owner is a natural person; or

b. the beneficiary, if the account owner is a legal entity.

3. the beneficiary receives a scholarship, waiver of tuition, or similar subvention that the LATTA determines cannot be converted into money by the Beneficiary, to the extent the amount of the refund does not exceed the amount of the scholarship, waiver of tuition, or similar subvention awarded to the beneficiary. in such case the refund shall be equal to the scholarship, waiver of tuition, or similar subvention that the LATTA determines cannot be converted into money by the beneficiary of the account or the redemption value, whichever is less, and shall be made to:

a. the account owner or the beneficiary, as designated in the owner=s agreement, if the account owner is a natural person; or

b. the beneficiary, if the account owner is a legal entity.

G. - G.3. ...

H. Voluntary termination of an account after december 31, 2001

1. Refunds shall be equal to the redemption value of the education savings account at the time of the refund, and shall be made to the person designated in the owner=s agreement or by rule.

H.2. - J.2. ...

AUTHORIT Y NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998). Repromulgated LR 26:2265 (October 2000). Amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:

**§313. Substitution, Assignment, and Transfer**

A. - A.3. ...

4. If the substitute beneficiary is not a member of the family of the previous beneficiary:

a. and the account owner is a natural person, the account must be refunded to the account owner and a new account must be opened.

b. and the account owner is a legal entity, a new account shall be opened in the name of the new beneficiary, and:

i. these transfers may be treated as refunds under federal and state tax laws in which case the account owner will be subject to any associated tax consequences; and

ii. the earnings enhancements and interest thereon will not be transferred to the new beneficiary. (note that the deposit(s) will be eligible for earnings enhancement for the year of the deposit.)

B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR:26:2265 (October 2000)., amended LR 27:1882 (November 2001), LR 28:

George Badge Eldredge
General Counsel

0201#008

## DECLARATION OF EMERGENCY

**Department of Environmental Quality**
**Office Environmental Assessment**
**Environmental Planning Division**

Control of Nitrogen Oxides Emissions
(LAC 33:III.2201) (AQ 215E)

Editor's Note: Section 2201 of this Emergency Rule is being repromulgated to correct equations within the text. The original Emergency Rule may be viewed on pages 2049-2063 of the December 20, 2002 edition of the *Louisiana Register*.

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 R.S. 30:2011, the secretary of the Department hereby finds that imminent peril to the public welfare exists and accordingly adopts the following emergency rules effective December 20, 2001, for 120 days, or until promulgation of the final rules, whichever occurs first.

This action is necessary to meet the requirements of the United States Environmental Protection Agency (EPA) for granting an extension of the attainment date to prevent the reclassification from "serious" to "severe" of the Baton Rouge ozone nonattainment area. This area includes the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge.

The State of Louisiana has requested an extension of the attainment date imposed by the 1990 amendments to the Clean Air Act, pursuant to EPA's transport policy. The state has committed to the EPA to submit the necessary documentation to demonstrate transport and revisions to the State Implementation Plan (SIP) by December 31, 2001. The EPA has provided notice in the *Federal Register* of its intent to review and possibly grant such extension request when submitted or in the alternative to reclassify the Baton Rouge nonattainment area. Failure to submit the transport demonstration and revisions to the SIP would result in the Baton Rouge nonattainment area being reclassified from "serious" to "severe." A reclassification would have detrimental effects on the operations of the department, the local economy, and the citizens of the area without any significant benefit, including improved air quality. Several other parties, including local governments, trade organizations, and industry, have expressed agreement with such conclusion.

The proposed SIP revision involves the adoption of certain new rules, including the adoption of air pollution control standards for emissions of oxides of nitrogen ($NO_x$) and revisions to the existing emission reduction credits banking regulations. These rules were proposed in accordance with regular rulemaking procedures on July 20, 2001, as AQ211 (LAC 33:III.Chapter 6**C** Banking) and on August 20, 2001, as AQ215 (LAC 33:III.Chapter 22**C** $NO_x$). During the comment period for the proposed rules the department received significant public comment and, as a result, is proposing substantive changes to these rules, as AQ211S and AQ215S.

In order that the transport demonstration and revisions to the SIP may be submitted to the EPA in accordance with the

commitment previously made, the department hereby adopts Emergency Rules AQ211E and AQ215E. The Emergency Rules include the proposed rule language that has been modified to include substantive amendments. The Emergency Rules shall be effective for 120 days or until promulgation of final Rules AQ211S and AQ215S, whichever occurs first.

Adopted this 10th day of December, 2001.

**Title 33**
**ENVIROMENTAL QUALITY**
**Part III. Air**

**Chapter 22. Control of Emissions of Nitrogen Oxides ($NO_x$)**

**§2201. Affected Facilities in the Greater Baton Rouge $NO_x$ Control Area**

A. Applicability

1. The provisions of this Chapter shall apply to any affected facility in the Greater Baton Rouge $NO_x$ Control Area (i.e., the entire parishes of Ascension, East Feliciana, East Baton Rouge, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana).

2. The provisions of this Chapter shall apply during the ozone season (May 1 to September 30) of each year.

3. All affected facilities shall be in compliance as expeditiously as possible, but by no later than the dates specified in Subsection J of this Section.

B. Definitions. Unless specifically defined in this Subsection or in LAC 33:III.111 or 502, the words, terms, and abbreviations in this Chapter shall have the meanings commonly used in the field of air pollution control. For purposes of this Chapter only, the following definitions shall supersede any definitions in LAC 33:III.111 or 502.

*Administrator***C**the administrator, or an authorized representative, of the U. S. Environmental Protection Agency (EPA).

*Administrative Authority*—the secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

*Affected Facility*—any facility within the Greater Baton Rouge $NO_x$ Control Area with one or more affected point sources that collectively emit or have the potential to emit 50 tons or more per year of $NO_x$, unless exempted in Subsection C of this Section.

*Affected Point Source*—any point source located at an affected facility and subject to an emission factor listed in Paragraph D.1 of this Section or used as part of an alternative plan in accordance with Subsection E of this Section, unless exempted in Subsection C of this Section.

*Ammonia Reformer*—a type of process heater/furnace located in an ammonia production plant that is designed to heat a mixture of natural gas and steam to produce hydrogen and carbon oxides.

*Averaging Capacity*—the average actual heat input rate in MMBtu/hour at which an affected point source operated during the ozone season of the two calendar years of 2000 and 2001. Another period may be used to calculate the averaging capacity if approved by the department. For units with permit revisions that legally curtailed capacity or that were permanently shutdown after 1997, the averaging capacity is the average actual heat input during the last two ozone seasons of operation before the curtailment or shutdown.

*Biomass*—defined as bagasse, rice-husks, wood, or other combustible, vegetation-derived material that is suitable for use as fuel.

*Boiler*—any combustion equipment fired with any solid, liquid, and/or gaseous fuel that is primarily used to produce steam, or heat water, or any other heat transfer medium for power generation or for heat to an industrial, institutional, or commercial operation. Equipment that is operated primarily for waste treatment and that incidentally produces steam shall not be regulated under this Chapter as a boiler.

*Cap*—a system for demonstrating compliance whereby an affected facility, a subset of affected sources at an affected facility, or a group of affected facilities under common control are operated to stay below a mass emission rate expressed as mass per unit of time. The allowable mass emission rate is calculated by adding the allowable emissions for each affected point source. The allowable emission is the product of the source's averaging capacity and the applicable factor in Paragraph D.1 of this Section.

*Chemical Processing Gas Turbine*—a gas turbine that vents its exhaust gases into the operating stream of a chemical process.

*Coal*—all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials, Designation D388-77. For the purposes of this Chapter, coal shall also include petroleum coke, solid carbon residues from the processing of petroleum products and coal-derived synthetic fuels, including but not limited to, solvent refined coal, coal-oil mixtures, and coal-water mixtures.

*Combined Cycle*—a combustion equipment configuration that generates electrical power with a stationary gas or liquid-fired turbine and/or a stationary internal combustion engine and that recovers heat from the discharge within equipment to heat water or generate steam.

*Continuous Emissions Monitoring System (CEMS)*—the total equipment used to sample and condition, if applicable, to analyze, and to provide a permanent record of emissions or process parameters.

*Daily Average*—an average of the hourly data for one calendar day starting at 12-midnight and continuing until the following 12-midnight.

*Department*—the Louisiana Department of Environmental Quality.

*Elapsed Run-Time Meter*—an instrument designed to measure and record the time that an affected point source has run during a designated period.

*Electric Power Generating System*—all boilers, stationary internal combustion engines, stationary gas turbines, and other combustion equipment within an affected facility that are used to generate electric power and that are owned or operated by a municipality, an electric cooperative, an independent power producer, a public utility, or a Louisiana Public Service Commission regulated utility company, or any of its successors.

*Emergency Standby Gas Turbine or Engine*—a gas turbine or engine operated as an electrical or a mechanical power source for an affected facility when the primary source has been disrupted or discontinued during an emergency due to circumstances beyond the control of the owner or operator of the affected facility and that is operated only during such an emergency or when normal testing

procedures, as recommended by the manufacturer, are being performed. The definition includes a stationary gas turbine or a stationary internal combustion engine that is used at a nuclear power plant as an emergency generator that is subject to Nuclear Regulatory Commission (NRC) regulations and a stationary internal combustion engine that is used for the emergency pumping of water for either fire protection or flood relief. This term does not include an electric generating unit in peaking service.

*Facility*—a contiguous area under common control that contains various types of equipment that emit or have the potential to emit $NO_x$.

*Facility-Wide Averaging Plan*—an alternative emission plan whereby an affected facility (or affected facilities with a common owner or operator) with multiple affected point sources of $NO_x$ emissions achieves the required reduction by a different mix of controls from that mandated by Subsection D of this Section. Some affected point sources may be over-controlled (more restrictive than the regulation) or shutdown in order to offset other affected point sources that are under-controlled (less restrictive than the regulation) or not controlled, provided the required overall $NO_x$ reduction is met.

*Facility-Wide Emission Factor*—the total average allowable $NO_x$ emission factor in pound $NO_x$/MMBtu for affected point sources when firing at their averaging capacities.

*F Factor*—the ratio of the gas volume of the products of combustion to the heat content of the fuel, typically expressed in dry standard cubic feet (dscf) per MMBtu.

*Flare*—a type of equipment specifically designed for combusting gaseous vents at an above-ground location.

*Fluid Catalytic Cracking Unit Regenerator*—a unit in a refinery where catalyst is recovered (regenerated) by burning off coke and other deposits with hot air. The term includes the associated equipment for controlling air pollutant emissions and for heat recovery.

*Gas*—any gaseous substance that can be used as a fuel to create heat and/or mechanical energy including natural gas, synthetically produced gas from coal or oil, gaseous substances from the decomposition of organic matter, and gas streams that are by-products of a manufacturing process.

*Greater Baton Rouge $NO_x$ Control Area*—an area around Baton Rouge where $NO_x$ controls are being implemented under this Chapter. The area consists of the entire parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana.

*Heat Input*—the heat released due to fuel combustion in an affected point source, using the higher heating value of the fuel, excluding the sensible heat of the incoming combustion air.

*Higher Heating Value*—a measurement of the heat evolved during the complete combustion of a substance, including the latent heat of condensation of any water that is produced.

*Horsepower Rating*—the engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

*Incinerator*—any combustion equipment, with or without heat recovery, that is designed and operated primarily for the treatment of gaseous and/or liquid waste. If waste treatment is an incidental part of the operation, the unit shall not be classified as an incinerator. An example of incidental use is when a waste stream is injected into a boiler, process heater/furnace, or other piece of process combustion equipment and the waste streams contribute less than 50 percent of the total heat input. A device classified as a boiler or industrial furnace in accordance with LAC 33:V.Chapter 30 is not an incinerator.

*International Standards Organization (ISO) Conditions*—standard conditions of $59^0$F, 1.0 atmosphere, and 60 percent relative humidity.

*Kilns and Ovens*—combustion equipment used for drying, baking, cooking, and calcining. Kilns can also be used for the treatment of solid wastes.

*Lean-Burn Engine*—a spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 1.0 percent, by volume on a dry basis, as originally designed by the manufacturer. The exhaust gas oxygen concentration shall be determined from the uncontrolled exhaust stream.

*Liquid Fuel*—any substance in a liquid state that can be used as a fuel to create heat and/or mechanical energy including:

a. crude oil, petroleum oil, fuel oil, residual oil, distillate, or other liquid fuel derived from crude oil or petroleum;

b. liquid by-products of a manufacturing process or a petroleum refinery; and

c. any other liquid fuel.

*Low Ozone Season Capacity Factor Boiler or Process Heater/Furnace*—a boiler or process heater/furnace with maximum rated capacity greater than or equal to 80 MMBtu/hour and ozone season heat input less than or equal to $0.92 \times 10^{11}$ Btu.

*Malfunction*—any sudden and unavoidable failure, as defined in LAC 33:III.111.

*Maximum Rated Capacity*—the maximum annual design capacity, as determined by the equipment manufacturer or as proven by actual maximum annual performance in the field, unless the affected point source is limited by permit condition to a lesser annual capacity, in which case the limiting condition shall be used as the maximum rated capacity. Where the capacity of a point source is limited by an operating cap applicable to a group of point sources (e.g., several units capped to a combined total firing rate), the total firing rate cap shall be divided by the number of point sources in the cap to arrive at an equivalent maximum rated capacity. This equivalent maximum rated capacity shall be used to determine the applicability of the emission factors and monitoring provisions of this Chapter.

*Megawatt (MW) Rating*—the continuous power rating or mechanical equivalent by a stationary gas turbine manufacturer at ISO conditions, without consideration to the increase in turbine shaft output and/or decrease in turbine fuel consumption by the addition of energy recovered from exhaust heat.

*Nitric Acid Production Unit*—a facility that produces nitric acid by any process.

*Nitrogen Oxides ($NO_x$)*—the sum of the nitric oxide and nitrogen dioxide in a stream, collectively expressed as nitrogen dioxide.

*Nonattainment Parish*—in Louisiana, the parishes of Ascension, East Baton Rouge, Iberville, Livingston, or West Baton Rouge.

*Number 6 Fuel Oil*—fuel oil of the grade that is classified number 6, according to ASTM Standard Specification for classification of fuel oil by ASTM D396-84.

*Ozone Season*—May 1 to September 30, inclusively.

*Peaking Service*—a stationary gas turbine or stationary internal combustion engine that is operated intermittently to produce energy. To be in peaking service, the annual heat input or horsepower-hours for the affected point source shall be less than the product of 2500 hours and the MW rating of the turbine or the horsepower rating of the engine.

*Permanent Shutdown*—a shutdown lasting for two years or more or resulting in the removal of the source from the department emissions inventory.

*Predictive Emissions Monitoring System (PEMS)*—a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

*Process Heater/Furnace*—any combustion equipment fired with solid, liquid, and/or gaseous fuel that is used to transfer heat to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term process heater/furnace does not apply to any unfired waste heat recovery boiler that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this Subsection.

*Pulp Liquor Recovery Furnace*—either a straight Kraft recovery furnace or a cross recovery furnace as defined in 40 CFR 60 subpart BB.

*Rich-Burn Engine*—all stationary reciprocating engines that do not fit the definition of lean-burn.

*Sensible Heat*—the heat energy stored in a substance as a result of an increase in its temperature.

*Stationary Gas Turbine*—any turbine system that is gas and/or liquid fuel fired and that is either attached to a foundation at an affected facility or is portable equipment operated at a specific affected facility for more than 60 days in any ozone season.

*Stationary Internal Combustion Engine*—a reciprocating engine that is either gas and/or liquid fuel fired and that is either attached to a foundation or is portable equipment operated at a specific affected facility for more than six months at a time. This term does not include locomotive engines or self-propelled construction engines.

*Supplemental Firing Unit*—a unit with burners that is installed in the exhaust duct of a stationary gas turbine or internal combustion engine for the purpose of supplying supplemental heat to a downstream heat recovery unit.

*Thirty-Day (30-Day) Rolling Average*—an average, calculated for each day that fuel is combusted, of hourly emissions data for the preceding 30 days that fuel is combusted in an affected point source.

*Totalizing Fuel Meter*—a meter or metering system that provides a cumulative measure of fuel consumption.

*Trading Allowances*—the tons of $NO_x$ emissions that result from over-controlling, permanently reducing the operating rate of, or permanently shutting down, an affected point source located within the Greater Baton Rouge $NO_x$ Control Area. The allowances are determined in accordance with LAC 33:III.Chapter 6 and from the emission factors required by Subsection D of this Section for the affected point source and the enforceable emission factor assigned by the owner or operator in accordance with Subsection E of this Section. Trading allowances will be granted only for reductions that are real, quantifiable, permanent, and federally enforceable. $NO_x$ reductions that are used in a facility-wide averaging plan cannot be also used in a trading plan.

*Wood*—wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

C. Exemptions. The following categories of equipment or processes located at an affected facility within the Greater Baton Rouge $NO_x$ Control Area are exempted from the provisions of this Chapter:

1. boilers and process heater/furnaces with a maximum rated capacity of less than 80 million British thermal units (MMBtu) per hour;

2. stationary gas turbines with a megawatt rating based on heat input of less than 10 megawatts (MW);

3. stationary internal combustion engines as follows:

a. rich-burn engines with a rating of less than 300 horsepower (Hp); and

b. lean-burn engines with a rating of less that 1500 Hp;

4. low ozone season capacity factor boilers and process heater/furnaces, in accordance with Paragraph H.11 of this Section;

5. stationary gas turbines and stationary internal combustion engines, that are:

a. used in research and testing;

b. used for performance verification and testing;

c. used solely to power other engines or turbines during start-ups;

d. operated exclusively for fire fighting or training and/or flood control;

e. used in response to and during the existence of any officially declared disaster or state of emergency;

f. used directly and exclusively for agricultural operations necessary for the growing of crops or the raising of fowl or animals; or

g. used as chemical processing gas turbines.

6. any point source, in accordance with Paragraph H.12 of this Section, that operates less than 400 hours during the ozone season;

7. flares, incinerators, kilns and ovens as defined in Subsection B of this Section;

8. any point source during start-up and shutdown as defined in LAC 33:III.111 or during a malfunction as defined in 40 CFR section 60.2;

9. any point source used solely to start up a process;

10. any point source firing biomass fuel that supplies greater than 50 percent of the heat input on a monthly basis;

11. any point source at a sugar mill;

12. fluid catalytic cracking unit regenerators;

13. pulp liquor recovery furnaces;

14. diesel-fired stationary internal combustion engines;

15. any affected point source that is required to meet a more stringent state or federal $NO_x$ emission limitation (In this case, the monitoring, reporting, and recordkeeping requirements shall be in accordance with the more stringent regulation and not this Chapter.);

16. wood-fired boilers that are subject to 40 CFR 60, subpart Db;

17. nitric acid production units that are subject to 40 CFR 60, subpart G or LAC 33:III.2307;

18. any affected point source firing Number 6 Fuel Oil during a period of emergency and approved by the administrative authority;

19. boilers and industrial furnaces treating hazardous waste and regulated under LAC 33:V.Chapter 30 or 40 CFR part 264, 265, or 266, including halogen acid furnaces and sulfuric acid regeneration furnaces; and

20. high efficiency boilers or other combustion devices regulated under the Toxic Substance Control Act PCB rules under 40 CFR part 761.

D. Emission Factors

1. The following table lists $NO_x$ emission factors that shall apply to affected point sources located at affected facilities in the Greater Baton Rouge $NO_x$ Control Area.

| $NO_x$ Emission Factors | | |
|---|---|---|
| **Category** | **Maximum Rated Capacity** | **NOx Emission Factor** [a] |
| Electric Power Generating System Boilers: | | |
| Coal-fired | >/= 80 MMBtu/Hour | 0.21 pound/MMBtu |
| Number 6 Fuel Oil-fired | >/= 80 MMBtu/Hour | 0.18 pound/MMBtu |
| All Others (gaseous or liquid) | >/= 80 MMBtu/Hour | 0.10 pound/MMBtu |
| Industrial Boilers | >/= 80 MMBtu/Hour | 0.10 pound/MMBtu |
| Process Heater/Furnaces: | | |
| Ammonia Reformers | >/= 80 MMBtu/Hour | 0.23 pound/MMBtu |
| All Others | >/= 80 MMBtu/Hour | 0.08 pound/MMBtu |
| Stationary Gas Turbines | >/= 10 MW | 0.16 pound/MMBtu [b] |
| Stationary Internal Combustion Engines: | | |
| Lean-burn | >/= 1500 Hp | 4g/Hp-hour |
| Rich-burn | >/= 300 Hp | 2g/Hp-hour |

[a] all factors are based on the higher heating value of the fuel.

[b] equivalent to 42 ppmv (15 percent $O_2$, dry basis) with an F factor of 8710 dscf/MMBtu.

2. Any electric power generating system boiler that operates with a combination of fuels shall comply with an adjusted emission factor calculated as follows:

a. if a combination of fuels is used normally, the emission factor from Paragraph D.1 of this Section shall be adjusted by the weighted average heat input of the fuels based on the ozone season average usage in 2000 and 2001, or another period if approved by the department;

b. if the boiler is normally fired with a primary fuel and a secondary fuel is available for back-up, the unit shall comply with the emission factor for the primary fuel while firing the primary fuel and with the emission factor for the secondary fuel while firing the secondary fuel. In addition, the usage of the secondary fuel shall be limited to the ozone season average usage of the secondary fuel in 2000 and 2001, or another period if approved by the department; and

c. in either case, if the secondary fuel is less than 10 percent of the weighted average, the owner or operator may choose to comply with the unadjusted limit for the primary fuel.

3. For affected point sources in an electric power generating system that fire gaseous or liquid fuels, the emission factors from Subsection D of this Section shall apply as the mass of $NO_x$ emitted per unit of heat input (pound $NO_x$ per MMBtu), on a daily average basis. Alternatively, a facility may choose to comply with a ton per day or a pound per hour cap provided that monitoring is installed to demonstrate compliance with the cap. The cap for a facility or for multiple facilities under common control is calculated by adding the products of the factor from Paragraph D.1 of this Section and the averaging capacity for each affected point source as follows:

Equation D-1

$$Cap\ (tpd) = 0.012\ X \sum_{i=1}^{N} (R_{li}\ x\ HI_i)$$

Where:

$HI_i$ = the averaging capacity of each point source (MMBtu/hour)

i = each point source included in the cap

N = the total number of point sources included in the cap

$R_{li}$ = the limit for each point source from Subsection D of this Section (pound $NO_x$/MMBtu)

4. For all other affected point sources, including those in a coal-fired electric power generating system, the emission factors from Subsection D of this Section shall apply as the mass of $NO_x$ emitted per unit of heat input (pound $NO_x$ per MMBtu), on a 30-day rolling average basis. Alternatively, a facility may choose to comply with a cap as detailed in Paragraph D.3 of this Section provided a system, approved by the department, is installed to demonstrate compliance.

5. If one affected point source discharges in part or in whole to another affected point source, the portion discharging into the second point source shall be treated as emanating from the second point source and shall be controlled to the same limit as that specified for the second point source, while the portion discharging directly to the atmosphere from the first point source shall be controlled to the limit of the first point source. This term shall not include a combined cycle unit that discharges into a supplemental firing unit or other type of combustion equipment. For this type of point source, the emissions shall be controlled as follows:

a. for the turbines and/or engines, at the appropriate limits for the turbines and/or engines alone; and

b. for the supplemental firing unit or other type of combustion equipment, at the appropriate limit for the supplemental firing or combustion equipment with the measured emission values adjusted for the emissions coming from the turbines and/or engines.

6. Where a common stack is used to collect vents from affected point sources or affected point sources and exempt point sources and monitoring and/or testing of individual units is not feasible, the department, upon application from the owner or operator, shall specify alternative methods to demonstrate compliance with the emission factors of this Subsection.

7. Any affected point source firing gaseous fuel that contains hydrogen and/or carbon monoxide may apply a multiplier, as calculated below, to the appropriate emission factor given in Paragraph D.1 of this Section. The total hydrogen and/or carbon monoxide volume in the gaseous fuel stream is divided by the total gaseous fuel flow volume to determine the volume percent of hydrogen and/or carbon monoxide in the fuel supply. In order to apply this multiplier, the owner or operator of the affected point source shall sample and analyze the fuel gas composition for hydrogen and/or carbon monoxide in accordance with Paragraph G.5 of this Section.

Equation D-2

$$If \quad (Vol.\ \%\ H_2 + Vol.\ \%\ CO) = or < 50$$

$$Then$$

$$fuel\ \ multiplier = 1 + \frac{0.5\ x\ (Vol.\ \%\ H_2 + Vol.\ \%\ CO)}{100}$$

$$Otherwise$$

$$fuel\ \ multiplier = 1.25$$

8. The owner or operator of a stationary gas turbine using a fuel that has an F factor different than 8710 dscf/MMBtu may adjust the allowable emission factor shown in Paragraph D.1 of this Section. The adjustment is made by dividing the actual F factor (dscf/MMBtu) of the fuel by 8710 and multiplying the result by 0.16 to get the adjusted allowable emission factor. The use of this option shall be detailed in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section.

9. On a day that is designated as an Ozone Action Day by the department, a facility shall not fire an affected point source with Number 6 Fuel Oil or perform testing of emergency and training combustion units without prior approval of the administrative authority.

E. Alternative Plans

1. Facility-Wide Averaging Plan. A facility-wide averaging plan is established in this Chapter for single affected facilities and multiple affected facilities that are owned and operated by the same entity. Within the Greater Baton Rouge $NO_x$ Control Area, an owner or operator of one or more affected facilities may use the facility-wide averaging plan as an alternative means of compliance with the emission factors from Subsection D of this Section. A request for approval to use a facility-wide averaging plan, that includes the details of the plan, shall be submitted to the department either separately or with the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. A facility-wide averaging plan submitted under this provision shall be approved if the department determines that it will provide emission reductions equivalent to or more than that required by the emission factors in Subsection D of this Section and the plan establishes satisfactory means for determining ongoing compliance, including appropriate monitoring and recordkeeping requirements. Approval of the alternative plans by the administrative authority does not necessarily indicate automatic approval by the administrator.

a. An owner or operator who elects to use a facility-wide averaging plan for compliance shall establish an emission factor for each applicable affected point source such that if each affected point source was operated at its averaging capacity, the cumulative emission factor in pounds $NO_x$/MMBtu from all point sources in the averaging group would not exceed the facility-wide emission factor, as shown in Equation E-3. The equations below shall be used to calculate the cumulative emission rate and the facility-wide emission factor.

$$FL = \sum_{i=1}^{N} (R_{li}\ x\ f_i) \qquad \text{Equation E-1}$$

Where:

$$f_i = HI_i / \sum_{i=1}^{N} HI_i \qquad \text{Equation E-2}$$

$$\sum_{i=1}^{N} (R_{ai}\ x\ f_i) \leq FL \qquad \text{Equation E-3}$$

Where:

$f_i$ = fraction of total system averaging capacity for point source i

$HI_i$ = the averaging capacity of each point source (MMBtu/hour)

i = each point source in the averaging group

N = the total number of point sources in the averaging group

$R_{ai}$ = the limit assigned by the owner to each point source in the averaging plan (pound $NO_x$/MMBtu)

$R_{li}$ = the limit for each point source from Subsection D of this Section (pound $NO_x$/MMBtu)

FL = facility-wide emission factor (pound $NO_x$/MMBtu) of all point sources included in the averaging plan

b. An owner or operator of an electric power generating system that fires gaseous or liquid fuels and that chooses to use an averaging plan shall demonstrate compliance by either of the following methods:

i. operating such that each affected point source does not exceed its assigned individual limit in pound $NO_x$/MMBtu on a daily average basis; or

ii. complying with a cap as described in Paragraph D.3 of this Section, provided that a monitoring system is installed to demonstrate compliance with the cap.

c. Owners or operators of all other affected point sources, including those in a coal-fired electric power generating system, that choose to use an averaging plan shall demonstrate compliance by either of the following methods:

i. operating such that each affected point source does not exceed its assigned individual limit in pound $NO_x$/MMBtu on a 30-day rolling average basis; or

ii. complying with a cap as described in Paragraph D.4 of this Section, provided a system, approved

by the department, is installed to demonstrate compliance with the cap.

d. Notwithstanding the compliance methods described in Clauses E.1.b.i and c.i of this Section, the owner or operator that chooses to use an averaging plan shall include in the submitted plan provisions that demonstrate to the department that any under-controlled unit will not be operated at more that ten percent above its calculated averaging capacity fraction ($f_i$ in Equation E-2). If this limit is not adequately demonstrated, the department shall require that the facility demonstrate compliance by operating such that the facility-wide emission factor, FL, is not exceeded, instead of by the methods described in Clause E.1.b.i or c.i of this Section.

e. The owner or operator of affected point sources complying with the requirements of this Subsection can include in the plan either all of the affected point sources at the facility or select only certain sources to be included.

f. $NO_x$ reductions accomplished after 1997 through curtailments in capacity of a point source with a permit revision or by permanently shutting down the point source may be included in the averaging plan. In order to include a unit with curtailed capacity in the averaging plan, the old averaging capacity, determined from the average of the two ozone seasons prior to the capacity curtailment, shall be used to calculate the unit's contribution to the term FL. The new averaging capacity, determined from the enforceable permit revision, shall be multiplied by the owner assigned limit to calculate the contribution of the curtailed unit to the cumulative emission factor for the averaging group.

g. $NO_x$ reductions from exempted point sources, as defined in Subsection C of this Section, may be used in a facility-wide averaging plan. If a unit exempted in Subsection C of this Section is included in an averaging plan, the term $R_{ii}$ in Equation E-1 shall be established, in accordance with Subsection G of this Section, from a stack test that was performed before the $NO_x$ reduction project was implemented and the term $R_{ai}$ shall be established from the owner-assigned emission factor in accordance with Subparagraph E.1.a of this Section.

h. Solely for the purpose of calculating the facility-wide emission factor, the allowable emission factor (pound $NO_x$/MMBtu) for each affected stationary internal combustion engine is the applicable $NO_x$ emission factor from Subsection D of this Section (g/Hp-hour) divided by the product of the engine manufacturer's rated heat rate (expressed in Btu/Hp-hour) at the engine's Hp rating and $454 \times 10^{-6}$.

i. The owner or operator of affected point sources complying with the requirements of this Subsection in accordance with an emissions averaging plan shall carry out recordkeeping that includes, but is not limited to, a record of the data on which the determination of each point source's hourly, daily, or 30-day, as appropriate, compliance with the facility-wide averaging plan is based.

2. Trading Plan. Trading is established in this Chapter as an alternate means of compliance with the emission factors from Subsection D of this Section. Within the Greater Baton Rouge $NO_x$ Control Area, trading allowances, as defined in Subsection B of this Section, may be traded between affected facilities owned by different companies in accordance with the provisions of LAC 33:III.Chapter 6. The approval to use trading shall be requested in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. A trading plan submitted under this provision shall be approved if the department determines that it will provide $NO_x$ emission reductions equivalent to or more than that required by the emission factors of Subsection D of this Section and the plan establishes satisfactory means for determining ongoing compliance, including appropriate monitoring and recordkeeping requirements. Approval of trading plans by the administrative authority does not necessarily indicate automatic approval of the administrator.

F. Permits

1. Authorization to Install and Operate $NO_X$ Control Equipment

a. An owner or operator may obtain approval to install and operate $NO_X$ control equipment that does not result in ammonia emissions above the minimum emission rate (MER) in LAC 33:III.Chapter 51 by submitting documentation in accordance with LAC 33:III.511. This documentation shall include an estimate of any carbon monoxide (CO), sulfur dioxide ($SO_2$), particulate matter ($PM_{10}$), and/or volatile organic compound (VOC) emission increases associated with the $NO_X$ control technology. If approved, the administrative authority shall grant an authorization to construct and operate in accordance with LAC 33:III.501.C.3. Any appropriate permit revision reflecting the emission reduction shall be obtained no later than 180 days after commencement of operation and in accordance with the procedures of LAC 33:III.Chapter 5.

b. In accordance with LAC 33:III.5111.C, installation of $NO_X$ control equipment that results in ammonia emissions above the MER in LAC 33:III.Chapter 51 shall not commence until a permit or permit modification has been approved by the administrative authority. In accordance with LAC 33:III.5107.D.1, the administrative authority shall provide at least 30 days for public comment before issuing any such permit.

2. Alternatively to Subparagraph F.1.a of this Section, an owner or operator of an affected facility that is operating with a Louisiana air permit may submit a completed permit modification application for the changes proposed to comply with this Chapter.

3. Any owner or operator with an affected facility that has retained grandfathered status, as described in LAC 33:III.501.B.6, shall submit an application in accordance with LAC 33:III.501.C.1 for the changes proposed to comply with this Chapter.

4. Duty to Supplement. In accordance with LAC 33:III.517.C, if an owner or operator has a permit application on file with the department, but the department has not released the proposed permit, the applicant shall supplement the application as necessary to address this Chapter.

5. Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Considerations. A significant net emissions increase in CO, $SO_2$, $PM_{10}$, and/or VOC in accordance with LAC 33:III.504 or 509, that is a direct result of, and incidental to, the installation of $NO_X$ control equipment or implementation of a $NO_X$ control technique required to comply with the

provisions of this Chapter shall be exempt from the requirements of LAC 33:III.509 and/or 504, as appropriate, provided the following conditions are met:

a. the project shall not:

i. cause or contribute to a violation of the national ambient air quality standard (NAAQS); or

ii. adversely affect visibility or other air quality related value (AQRV) in a class I area;

b. any increase in CO, $SO_2$, $PM_{10}$, and/or VOC emissions shall be:

i. quantified in the submittal required by Paragraphs F.1-4 of this Section; and

ii. tested in accordance with Subsection G of this Section, as applicable;

c. notwithstanding the requirements of Table 1 of LAC 33:III.504, any increase of VOC emissions at an affected facility located in a nonattainment parish shall be offset at a ratio of at least 1:1. Offsets shall be surplus, permanent, quantifiable, and federally enforceable and calculated in accordance with LAC 33:III.Chapter 6; and

d. a 30-day public comment period shall be provided in accordance with LAC 33:III.519.C prior to issuance of a permit or permit modification.

6. Increases above the MER in toxic air pollutant (TAP) emissions shall be subject to the applicable requirements of LAC 33:III.Chapter 51.

7. When pre-permit application approval of plans is desired by an owner or operator, a compliance plan may be submitted in accordance with this Subsection. The administrative authority shall approve the plan if it contains all of the required information to determine that the affected sources will be in compliance with this Chapter and is accurate. The compliance plan may address individual point sources, groups of point sources, or all point sources at the facility, as determined by the owner. The following information shall be submitted as appropriate:

a. the facility designation, as indicated by the identification number, submitted to the Office of Environmental Services, Permits Division;

b. a list of all units in the compliance plan, the emission point number as designated on the emission inventory questionnaire, the averaging capacity, and the maximum rated capacity;

c. identification of all combustion units with a claimed exemption in accordance with Subsection C of this Section, and the rule basis for the claimed exemption;

d. a list of any units that have been, or will be, curtailed or permanently shutdown;

e. for each unit, the actual emission factor that will be used to achieve compliance;

f. the control technology to be applied for each unit subject to control, and an anticipated construction schedule for each control device including the dates for completion of engineering, submission of permit applications, start and finish of construction, and initial start-up; and

g. the calculations to demonstrate that each unit will achieve the required $NO_x$ emission rate.

G. Initial Demonstration of Compliance

1. Emissions testing to demonstrate initial compliance with the $NO_x$ emission factors of Subsection D of this Section, or with emission limits that are part of an alternative plan under Subsection E of this Section, for affected point sources operating with a CEMS or PEMS that has been certified in accordance with Subsection H of this Section is not required. The certification of the CEMS or PEMS shall be considered demonstration of initial compliance. Testing for initial compliance is not required for an existing CEMS or PEMS that meets the requirements of Subsection H of this Section.

2. Emissions testing is required for all point sources that are subject to the emission limitations of Subsection D of this Section or used in one of the alternative plans of Subsection E of this Section. Test results must demonstrate that actual $NO_x$ emissions are in compliance with the appropriate limits of this Chapter. As applicable, CO, $SO_2$, $PM_{10}$, oxygen ($O_2$), $NH_3$, and VOC shall also be measured. Performance testing of these point sources shall be performed in accordance with the schedule specified in Subsection J of this Section.

3. The tests required by Paragraph G.2 of this Section shall be performed by the test methods referenced in Paragraph G.5 of this Section, except as approved by the administrative authority in accordance with Paragraph G.7 of this Section. Test results shall be reported in the units of the applicable emission factors and for the corresponding averaging periods.

4. Emission testing conducted in the three years prior to the initial demonstration of compliance date may be used to demonstrate compliance with the limits of Subsection D or E of this Section, if the owner or operator demonstrates to the department that the prior testing meets the requirements of this Subsection. The request to waive emissions testing according to this Paragraph shall be included in the permit application. The department reserves the right to request performance testing or CEMS performance evaluation upon reasonable notice.

5. Compliance with the emission specifications of Subsection D or E of this Section for affected point sources operating without CEMS or PEMS shall be demonstrated while operating at the maximum rated capacity, or as near thereto as practicable. The stack tests shall be performed according to emissions testing guidelines located on the department website in the technology section. Three minimum one-hour tests shall be performed and the following methods from 40 CFR part 60, appendix A shall be used:

a. Methods 1, 2, 3, and 4 or 19, with prior approval, for exhaust gas flow;

b. Method 3A or 20 for $O_2$;

c. Method 5 for PM;

d. Method 6C for $SO_2$;

e. Method 7E or 20 for $NO_x$;

f. Method 10 or 10A for CO;

g. Method 18 or 25A for VOC;

h. modified Method 5, or a department-approved equivalent, for $NH_3$; and/or

i. American Society of Testing and Materials (ASTM) Method D1945-96 or ASTM Method D2650-99 for fuel composition; ASTM Method D1826-94 or ASTM Method D3588-98 for calorific value.

6. All alternative or equivalent test methods, waivers, monitoring methods, testing and monitoring procedures, customized or correction factors, and alternatives to any design, equipment, work practices, or operational standards

must be approved by both the administrative authority and the administrator, if applicable, before they become effective.

7. An owner or operator may request approval from the department for minor modifications to the test methods listed in Paragraph G.5 of this Section, including alternative sampling locations and testing a subset of similar affected sources, prior to actual stack testing.

8. The information required in this Subsection shall be provided in accordance with the effective dates in Subsection J of this Section.

H. Continuous Demonstration of Compliance. After the initial demonstration of compliance required by Subsection G of this Section, continuous compliance with the emission factors of Subsection D or E of this Section, as applicable, shall be demonstrated by the methods described in this Subsection. For any alternative method, the department's approval does not necessarily constitute compliance with all federal requirements nor eliminate the need for approval by the administrator.

1. The owner or operator of boilers that are subject to this Chapter and that have a maximum rated capacity that is equal to or greater than 80 MMBtu/hour shall demonstrate continuous compliance as follows:

a. for boilers with a maximum rated capacity less than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, calibrate, maintain, and operate an oxygen monitor to measure oxygen concentration; and

iii. in order to continuously demonstrate compliance with the $NO_x$ limits of Subsection D or E of this Section, implement procedures to operate the boiler within the fuel and oxygen limits established during the initial compliance run in accordance with Subsection G of this Section; and

b. for boilers with a maximum rated capacity equal to or greater than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure gas and/or liquid fuel usage. For coal-fired boilers, belt scales or an equivalent device shall be provided;

ii. install, calibrate, maintain, and operate a diluent (either oxygen or carbon dioxide) monitor. The monitor shall meet all of the requirements of performance specification 3 of 40 CFR 60, appendix B;

iii. install, calibrate, maintain, and operate a $NO_x$ CEMS to demonstrate continuous compliance with the $NO_x$ emission factors of Subsection D or E of this Section, as applicable. The CEMS shall meet all of the requirements of 40 CFR part 60.13 and performance specification 2 of 40 CFR 60, appendix B; and

iv. install, calibrate, maintain, and operate a CO monitor. The monitor shall meet all of the requirements of performance specification 4 of 40 CFR 60, appendix B; or

v. alternatively to Clauses H.1.b.ii-iv of this Section, for demonstration of continuous compliance, the owner or operator may install, calibrate, certify, maintain, and operate a PEMS to predict $NO_x$, diluent ($O_2$ or $CO_2$), and CO emissions for each affected point source. As an alternative to using the PEMS to monitor diluent ($O_2$ or $CO_2$), a monitor for diluent according to Clause H.1.b.ii of this Section or similar alternative method approved by the department may be used. The PEMS shall be certified while operating on primary boiler fuel and, separately, on any alternative fuel. The certification shall be in accordance with EPA documents, "Example Specifications and Test Procedures for Predictive Emission Monitoring Systems" and "Predictive Emission Monitoring System to Determine $NO_x$ and CO Emissions from an Industrial Furnace" that are located on the EPA website in the emission monitoring section, both with posting dates of July 31, 1997; or

vi. alternatively to Clauses H.1.b.ii-iv of this Section, the owner or operator may request approval from the administrator for an alternative monitoring plan that uses a fuel-oxygen operating window to demonstrate continuous compliance of $NO_x$ and CO. The corners of the window shall be established during the initial compliance test required by Subsection G of this Section or similar testing at another time. The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

2. The owner or operator of process heater/furnaces that are subject to this Chapter and that have a maximum rated capacity that is equal to or greater than 80 MMBtu/hour shall demonstrate continuous compliance as follows:

a. for process heater/furnaces with a maximum rated capacity less than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, calibrate, maintain, and operate an oxygen monitor to measure oxygen concentration; and

iii. in order to continuously demonstrate compliance with the $NO_x$ limits of Subsection D or E of this Section, implement procedures to operate the process heater/furnace within the fuel and oxygen limits established during the initial compliance run in accordance with Subsection G of this Section; and

b. for process heater/furnaces with a maximum rated capacity equal to or greater than 250 MMBtu/hour:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, certify, maintain, and operate an oxygen or carbon dioxide diluent monitor in accordance with the requirements of Clause H.1.b.ii of this Section;

iii. install, certify, maintain, and operate a $NO_x$ CEMS in accordance with the requirements of Clause H.1.b.iii of this Section; and

iv. install, certify, maintain, and operate a CO monitor in accordance with the requirements of Clause H.1.b.iv of this Section; or

v. alternatively to Clauses H.2.b.ii-iv of this Section, the owner or operator may install, calibrate, certify, maintain, and operate a PEMS in accordance with the requirements of Clause H.1.b.v of this Section; or

vi. alternatively to Clauses H.2.b.ii-iv of this Section, the owner or operator may request approval from the department for an alternative monitoring plan that uses a fuel-oxygen operating window, or other system, to demonstrate continuous compliance of $NO_x$ and CO. The corners of the window shall be established during the initial

compliance test required by Subsection G of this Section or similar testing at another time. The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

3. The owner or operator of stationary gas turbines that are subject to this Chapter and that have a megawatt rating based on heat input that is equal to or greater than 10 MW shall demonstrate continuous compliance as follows:

a. for stationary gas turbines with a megawatt rating based on heat input less than 30 MW:

i. if the stationary gas turbine uses steam or water injection to comply with the $NO_x$ emission factors, install, calibrate, maintain, and operate a continuous system to monitor and record the average hourly fuel and steam or water consumption and the water or steam to fuel ratio. To demonstrate continuous compliance with the appropriate emission factor, the stationary gas turbine shall be operated at the required steam-to-fuel or water-to-fuel ratio as determined during the initial compliance test; and

ii. for other stationary gas turbines, install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage. Compliance with the emission factors of Subsection D or E of this Section shall be demonstrated by operating the turbine within the fuel limits established during the initial compliance run in accordance with Subsection G of this Section and by annual testing for $NO_x$ and CO with an approved portable analyzer; or

iii. alternatively to Clause H.3.a.i or ii of this Section, an owner or operator may choose to comply with the requirements of Clauses H.3.b.i-iv or v of this Section to demonstrate continuous compliance with the limits of Subsection D or E of this Section; and

b. for stationary gas turbines with a megawatt rating based on heat input of 30 MW or greater:

i. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage;

ii. install, certify, maintain, and operate an oxygen or carbon dioxide diluent monitor in accordance with the requirements of Clause H.1.b.ii of this Section;

iii. install, certify, maintain, and operate a $NO_x$ CEMS in accordance with the requirements of Clause H.1.b.iii of this Section; and

iv. install, certify, maintain, and operate a CO monitor in accordance with the requirements of Clause H.1.b.iv of this Section; or

v. alternatively to Clauses H.3.b.ii–iv of this Section, the owner or operator may install, calibrate, certify, maintain, and operate a PEMS in accordance with the requirements of Clause H.1.b.v of this Section; or

vi. alternatively to Clauses H.3.b.ii-iv of this Section, the owner or operator may request approval from the department for an alternative monitoring plan that complies with the provisions of Clause H.3.a.i of this Section, if the turbine uses steam or water injection for compliance, or Clause H.3.a.ii of this Section for other turbines. The alternative plan shall also require annual testing for $NO_x$ and CO with an approved portable analyzer and triennial stack testing for $NO_x$ and CO in accordance with the methods specified in Paragraph G.5 of this Section. The details for use of an alternative monitoring plan shall be submitted in the permit application or in the optional compliance plan described in Paragraph F.7 of this Section. The plan shall become part of the facility permit and shall be federally enforceable.

4. The owner or operator of stationary internal combustion engines that are subject to this Chapter and have a horsepower rating of 300 Hp or greater for rich-burn engines or 1500 Hp or greater for lean-burn engines shall demonstrate continuous compliance as follows:

a. install, calibrate, maintain, and operate a totalizing fuel meter to continuously measure fuel usage and demonstrate continuous compliance by operating the engine within the fuel limits established during the initial compliance run and by annual testing for $NO_x$ and CO with an approved portable analyzer and by triennial stack testing for $NO_x$ and CO in accordance with the methods specified in Paragraph G.5 of this Section; or

b. alternatively to Subparagraph H.4.a of this Section, an owner or operator may choose to comply with the requirements of Clauses H.3.b.i-iv or v of this Section to demonstrate continuous compliance with the limits of Subsection D or E of this Section.

5. A CEMS unit may be used to monitor multiple point sources provided that each source is sampled at least once every 15 minutes and the arrangement is approved by the department.

6. Existing instrumentation for any requirement in this Subsection shall be acceptable upon approval of the department.

7. For any affected point source that uses a chemical reagent for reduction of $NO_x$, a $NO_x$ CEMS, in accordance with Clause H.1.b.iii of this Section, and a CO monitor, in accordance with Clause H.1.b.iv of this Section, shall be provided.

8. For boilers or process heater/furnaces that are covered by this Chapter, that discharge through a common stack, and where the combined heat input is greater than 250 MMBtu, a $NO_x$ CEMS, in accordance with Clause H.1.b.iii of this Section, and a CO monitor, in accordance with Clause H.1.b.iv of this Section, shall be provided.

9. The owner or operator of any affected point source firing gaseous fuel for which a fuel multiplier from Paragraph D.7 of this Section is used shall sample, analyze, and record the fuel gas composition on a daily basis or on an alternative schedule approved by the administrative authority. If an owner or operator desires to use an alternative sampling schedule, he shall specify a sampling frequency in his permit application and provide an explanation for the alternative schedule. Fuel gas analysis shall be performed according to the methods listed in Subparagraph G.5.g of this Section, or other methods that are approved by the department. A gaseous fuel stream containing 99 percent $H_2$ and/or CO by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this Subsection:

a. a fuel gas analysis shall be performed initially using the test methods in Subparagraph G.5.g of this Section to demonstrate that the gaseous fuel stream is 99 percent $H_2$ and/or CO by volume or greater; and

b. the owner or operator shall certify that the fuel composition will continuously remain at 99 percent $H_2$

and/or CO by volume or greater during its use as a fuel to the point source.

10. All affected point sources that rely on periodic stack testing to demonstrate continuous compliance and use a catalyst to control $NO_x$ emissions shall be tested after each occurrence of catalyst replacement. Portable analyzers shall be acceptable for this check. Documentation shall be maintained on-site, if practical, of the date, the person doing the test, and the test results. Documentation shall be made available for inspection upon request.

11. The owner or operator of any low ozone season capacity factor boiler or process heater/furnace for which an exemption is granted shall install, calibrate, and maintain a totalizing fuel meter, with instrumentation approved by the department, and keep a record of the fuel input for each affected point source during each ozone season. The owner or operator of any boiler or process heater/furnace covered under this exemption shall notify the administrative authority within seven days if the Btu-per-ozone season limit is exceeded. If the Btu-per-ozone season limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after receipt of notification from the administrative authority of the loss of the exemption, the owner or operator shall submit a permit modification detailing how to meet the applicable emission factor as soon as possible, but no later than 24 months, after exceeding the Btu-per-ozone season limit. Included with this permit modification, the owner or operator shall submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the department.

12. The owner or operator of any affected point source that is granted an exemption for operating less than 400 hours during the ozone season shall install, calibrate, and maintain a nonresettable, elapsed run-time meter to record the operating time in order to demonstrate compliance. The owner or operator shall notify the administrative authority within seven days if the hours-per-ozone season limit is exceeded. If the hour-per-ozone season limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after receipt of notification from the administrative authority of the loss of the exemption, the owner or operator shall submit a permit modification detailing how to meet the applicable emission factor as soon as possible, but no later than 24 months, after exceeding the limit. Included with this permit modification, the owner or operator shall submit a schedule of increments of progress for the installation and operation of the required control equipment. This schedule shall be subject to the review and approval of the department.

I. Notification, Recordkeeping, and Reporting Requirements

1. The owner or operator of an affected point source shall notify the department at least 30 days prior to any compliance testing conducted under Subsection G of this Section and any CEMS or PEMS performance evaluation conducted under Subsection H of this Section in order to give the department an opportunity to conduct a pretest meeting and observe the emission testing. All necessary sampling ports and such other safe and proper sampling and testing facilities as required by LAC 33:III.913, or alternatives approved by the department, shall be provided for the testing. The test report shall be submitted to the department within 60 days after completing the testing.

2. The owner or operator of an affected point source required to demonstrate continuous compliance in accordance with Subsection H of this Section shall submit a written report within 90 days of the end of each quarter to the administrative authority for any noncompliance of the applicable emission limitations of Subsection D or E of this Section. The required information may be included in reports provided to the administrative authority to meet other requirements, so long as the report meets the deadlines and content requirements of this Paragraph. The report shall include the following information:

a. description of the noncompliance;

b. cause of the noncompliance;

c. anticipated time that the noncompliance is expected to continue or, if corrected, the duration of the period of noncompliance; and

d. steps taken to prevent recurrence of the noncompliance.

3. The owner or operator of an affected point source shall maintain records of all continuous monitoring, performance test results, hours of operation, and fuel usage rates for each affected point source. Such records shall be kept for a period of at least five years and shall be made available upon request by authorized representatives of the department. The emission monitoring (as applicable) and fuel usage records for each affected point source shall be recorded and maintained:

a. hourly for affected point sources complying with an emission factor on an hourly basis;

b. daily for affected point sources complying with an emission factor enforced on a daily average basis or on a 30-day rolling average basis; and

c. monthly for affected point sources exempt from the emission specifications based on ozone season heat input or hours of operation per ozone season.

4. The owner or operator shall maintain the following records:

a. records for a facility-wide averaging plan in accordance with Subparagraph E.1.i of this Section;

b. records approved for a trading plan in accordance with Paragraph E.2 of this Section; and

c. records in accordance with Paragraphs H.7, 8, 9, 10, 11, and 12 of this Section.

5. Ammonia emissions resulting from the operation of a $NO_x$ control equipment system shall be reported annually in accordance with LAC 33:III.5107.A.

J. Effective Dates

1. The owner or operator of an affected facility shall modify and/or install and bring into normal operation $NO_x$ control equipment and/or $NO_x$ monitoring systems in accordance with this Chapter as expeditiously as possible, but by no later than May 1, 2005.

2. The owner or operator shall complete all initial compliance testing, specified by Subsection G of this Section, for equipment modified with $NO_x$ reduction controls or a $NO_x$ monitoring system to meet the provisions of this Chapter within 60 days of achieving normal production rate or after the end of the shake down period, but in no event later than 180 days after initial start-up. Required testing to demonstrate the performance of existing,

unmodified equipment shall be completed in a timely manner, but by no later than November 1, 2005.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

J. Dale Givens
Secretary

0201#080

## DECLARATION OF EMERGENCY

### Office of the Governor
### Division of Administration
### Racing Commission

Claiming Rule (LAC 35:XI.9915 and 9939)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., amends the following Emergency Rule effective December 13, 2001 (extending its emergency status), and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule because it is no longer desirable nor necessary to limit someone to claim only one horse out of a claiming race; it is more beneficial to all parties to increase that limit to two. This is consistent with other racing jurisdictions.

### Title 35
### HORSE RACING
### Part XI. Claiming Rules and Engagements
### Chapter 99. Claiming Rule
### §9915. Number of Horses Claimed per Race

A. No person shall claim more than two horses in a race.

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), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

### §9939. Number of Claims on Stable or Trainer

A. When a trainer is training for more than one owner, only two claims from that stable will be allowed for any one race. Only one claim from owners having the same trainer will be allowed for any one 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, amended by the Department of Commerce, Racing Commission LR 2:447 (December 1976), repromulgated LR 3:42 (January 1977), LR 4:286 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

Charles A. Gardiner III
Executive Director

0201#011

## DECLARATION OF EMERGENCY

### Office of the Governor
### Division of Administration
### Racing Commission

Corrupt and Prohibited Practices C Penalty Guidelines
(LAC 35:I.1797)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective January 22, 2002 (extending its emergency status), and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule to provide for revised penalty guidelines for violations of class IV and V drugs/substances found in equine biological samples.

### Title 35
### HORSE RACING
### Part I. General Provisions
### Chapter 17. Corrupt and Prohibited Practices
### §1797. Penalty Guidelines

A. - B3. ...

4. *Classes IV and V*: possible suspension of license for a period not more than 60 days and a fine of not less than $500 nor more than $1,500, or both, depending on the severity and number of violations occurring within a 12-month period. The purse may be redistributed.

a. On ordinary violation(s) of Classes IV or V within a 12-month period the penalty shall be a fine of $500 on the first violation; a fine of $1,000 on the second violation; a fine of $1,000 on the third and subsequent violations and referred to the commission. The purse shall be redistributed commencing with the fourth violation within a 12-month period.

b. On extraordinary violation(s) of Classes IV or V in a manner that might affect the performance of a horse within a 12-month period the penalty shall be a fine of $1,000 on the first offense; a fine of $1,000 and referred to the commission for further action on second and subsequent violations. The purse shall be redistributed commencing with the third violation within a 12-month period.

c. On gross violation(s) of Classes IV or V in a manner that intends to affect the performance of a horse the penalty shall be not less than $1,000 and referred to the commission for further action. The purse shall be redistributed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission LR 19:612 (May 1993), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

Charles A. Gardiner III
Executive Director

0201#009

## DECLARATION OF EMERGENCY

**Office of the Governor**
**Division of Administration**
**Racing Commission**

Licenses Necessary for Entry (LAC 45:XLI.1105)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule effective December 11, 2001, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule to provide for an age limitation for possessing an owner's license, and related requirements.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part I. Horseracing Occupations**
**Chapter 11. Owners**
**§1105. Licenses Necessary for Entry**

A. Before a horse may be entered, its owner or owners must secure the appropriate licenses from the commission, unless permission is granted by the stewards.

B. The minimum age for an owner's applicant is 16 years old. However, for every applicant under the age of 18 years old, the owner's license application shall be submitted with a notarized affidavit from his or her parent or legal guardian stating that the parent or legal guardian assumes responsibility for the minor licensee's financial, contractual and other obligations relating to the applicant's participation in racing. Further, the applicant's parent or legal guardian must be eligible and present for eligibility for licensing.

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

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:429 (December 1976), repromulgated LR 3:25 (January 1977), LR 4:274 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

Charles A. Gardiner III
Executive Director

0201#013

## DECLARATION OF EMERGENCY

**Office of the Governor**
**Division of Administration**
**Racing Commission**

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

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective December 11, 2001 (revising Subsection C of the previous Emergency Rule), and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to adopt this rule to expand on the statutes involving slot machines housed at racing associations, specifically R.S. 27:353, R.S. 27:354 and R.S. 27:361, and specify certain provisions thereof.

**Title 35**
**HORSE RACING**
**Part III. Personnel, Registration and Licensing**
**Chapter 57. Associations- Duties and Obligations**
**§5737. Net Slot Machine Proceeds**

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

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

C. Not later than the date on which an association installs slot machines at its facility, it shall open three separate checking accounts as provided for herein. One account shall be a control bank account into which not less than 18 percent of the net slot machine proceeds for the activity month shall be deposited in sufficient time to be distributed or disbursed not later than the twentieth day of the following month as required by these rules. The association shall also open two distinct interest bearing accounts, one for thoroughbred purse proceeds and one for quarter horse purse proceeds, into which the association shall make its deposits for purse supplements totaling 15 percent of net slot machine proceeds and from which funds, including interest earned, such purse supplements shall be made available as provided by law and these rules.

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

E. While an association is not conducting live racing, the monies due to be paid pursuant to R.S. 27:361(B)(4)(a) shall be deposited in the appropriate breed account either (1) for accrual until the first day of the next live race meeting conducted by that association for that breed at which time such accumulated monies, including interest, shall be used to supplement appropriate purses during that race meeting, or (2) with prior written agreement of the Louisiana HBPA for reimbursement to the association for actual funds advanced to supplement purses at a preceding race meeting in anticipation of the revenue to be earned from slot machines. However, an association shall not be reimbursed except from proceeds earned during the same annual period during which it advanced the purse supplements.

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

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

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

I. All records and reports pertaining to slot machines, including checking accounts, maintained by an association shall be subject to inspection, reporting procedures and audits by the commission. All records and reports on revenues and expenses from slot machines shall be included as part of the association's annual CPA opinion audit submitted to the commission.

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

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

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

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

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

O. If the executive director, or his designee, determines after affording the party an opportunity for an informal conference that a violation has occurred and that a fine, license suspension, or other appropriate action should be taken, he shall file a *rule to show cause* with the commission for the notified party and its responsible officers to appear before the commission and show cause why disciplinary action or sanctions should not be imposed. The *rule to show cause* shall be forwarded by certified mail and by fax to the party. The cited party shall have 10 days from transmission, excluding holidays and weekends, to file with the commission a written response, under oath, and to submit a list of the names and addresses of all witnesses it desires to be subpoenaed for the hearing, including those to produce documents and other things. The failure to timely file a verified response may, in the commission's discretion, result in the cited party being refused to participate in the hearing on the *rule to show cause.*

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

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

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:435 (December 1976), LR 3:31 (January 1977), LR 4:278 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission LR 28:

Charles A. Gardiner III
Executive Director

0201#010

## DECLARATION OF EMERGENCY

**Office of the Governor**
**Division of Administration**
**Racing Commission**

Pick Four (LAC 35:XIII.11601-11625)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective December 13, 2001 (extending its emergency

status), and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to adopt this chapter of rules to allow for "pick four" wagering at all Louisiana tracks, a new form of wagering potentially increasing the handle, thereby benefiting the racing associations, horsemen and the state. This is consistent with other major racing jurisdictions.

## Title 35
## HORSE RACING
## Part XIII. Wagering
## Chapter 116. Pick Four

### §11601. Description; Selection; Principle

A. The pick four is a form of pari-mutuel wagering. Bettors select the first horse in each of four consecutive races designated as the pick four by the permit holder. The principle of a pick four is in effect a contract by the purchaser of a pick four ticket to select the winners of each of the four races designated as the pick four. The sale of pick four tickets other than from pari-mutuel machines shall be deemed illegal and is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

### §11603. Wagering Pool

A. The pick four pool shall be held entirely separate from all other pools and is no part of a daily double, exacta, trifecta, quinella or any other wagering pool. The pick four pool is a pool wherein the bettor is required to select four consecutive winning horses and is not a parlay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

### §11605. Denominations

A. Pick four tickets shall be sold in not less than $1 denominations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 28:

### §11607. Approval; Notation

A. Races in which pick four pools are conducted shall be approved by the Commission and clearly designated in the program, and pick four tickets will be clearly marked as pick four tickets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

### §11609. Procedure

A. After the wagering closes for the first race of the four designated pick four races, the commission will be deducted from the pari-mutuel pool in accordance with Louisiana law. The remaining net pool, subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winner in all four races comprising the pick four and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

1. In the event no ticket is sold combining winners of the four races comprising the pick four, the holders of tickets which include the winners of any three of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

2. In the event no ticket is sold combining the winners of three of the four races comprising the pick four, the holders of tickets which include the winners of any two of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

3. In the event no ticket is sold combining the winners of two of the four races comprising the pick four, the holders of tickets which include the winner(s) of any one of the four races shall be deemed winning ticket holders, and the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

### §11611. No Winning Ticket

A. In the event no winning ticket is sold that would require the distribution of the pick four pool as mentioned in §11609, the association shall make a complete refund of the pick four pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

### §11613. Cancelled Races

A. If for any reason one or more of the races comprising the pick four is/are cancelled or declared "no race," the net pool shall be distributed as provided in §11609.

B. In the event the pick four pool is opened and wagers accepted, and all four races comprising the pick four are cancelled for any reason, the association shall make a complete refund of the pick four pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

### §11615. Dead Heats

A. In the event of a dead heat for win between two or more horses in any pick four race, all such horses in the dead heat for win shall be considered as wining horses in the race for the purpose of calculating the pool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

### §11617. Closing Time; Disclosure

A. No pari-mutuel ticket for the pick four pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the four races comprising the pick four except for such refunds on pick four tickets as required by this regulation, and no person shall disclose the number of tickets sold in the pick four pool or the number or amount of tickets selecting winners of pick four races until such time as the stewards have determined the last race comprising the pick four to be official. At the conclusion of the third of the four races comprising the pick four, the association may display potential distributions to ticket holders depending upon the outcome of the fourth race of the pick four.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

**§11619. Entry or Field**

A. Those horses constituting an entry or a field as defined within the rules of racing shall race in any pick four race as a single wagering interest for the purpose of the pick four pari-mutuel pool calculations and payouts to the public. A scratch after wagering has begun of any part of an entry or field selection in such race shall have no effect with respect to the status of such entry and/or field as a viable wagering interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

**§11621. Scratches and Non-Starters**

A. At anytime after wagering begins on the pick four pool should a horse, entire betting entry or field be scratched, excused or declared a non-starter in any pick four race, no further tickets selecting such horse, betting entry or field shall be issued, and wagers upon such horse, betting entry or field, for purposes of the pick four pool shall be deemed wagers upon the horse, betting entry or field upon which the most money has been wagered in the win pool at the close of win pool betting for such race. In the event of a money tie in the win pool, the tied horse, betting entry or field with the lowest running number, as designated by the official racing program, shall be designated as the favorite for substitution purposes. For the purpose of this Section, when horses are prevented from starting by any malfunction of the starting gate itself they shall be considered as having been excused by the stewards. After close of betting, there shall be no refund, except as provided in §11611 or §11613.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

**§11623. Display**

A. These rules shall be prominently displayed in the betting area of the association conducting the pick four.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

**§11625. Unforeseen Circumstances**

A. Should circumstances occur which are not foreseen in these rules, questions arising thereby shall be resolved by the association and/or commission in accordance with general pari-mutuel practices. Decisions regarding distribution of the pick four pools shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

Charles A. Gardiner III
Executive Director

0201#012

## DECLARATION OF EMERGENCY

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

Home and Community Based Services Waiver Program—Mentally Retarded/Developmentally Disabled Waiver Slots

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted 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 adopted provisions governing the allocation of slots in the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver in a rule published June 20, 1997 (*Louisiana Register*, volume 23, number 6). The June 20, 1997 rule was subsequently amended to include Hammond Developmental Center residents or their alternates in the allocation of waiver slots previously reserved for residents of the Pinecrest Developmental Center (*Louisiana Register*, volume 24, number 3). The March 20, 1998 rule was later amended to increase the waiver slots allocated for foster children in the custody of the Office of Community Services and residents of public developmental centers and private ICF-MR facilities (*Louisiana Register*, volume 25, number 9). The Bureau of Community Supports and Services (BCSS) adopted an Emergency Rule to amend the September 20, 1999 rule by updating the waiver slot allocation methodology to better address the needs of targeted groups of citizens with disabilities (*Louisiana Register*, volume 27, number 9).

Adoption of this Emergency Rule does not pertain to the Notice of Intent which proposed to amend the MR/DD waiver service definitions contained in the July 20, 1990 Rule and to clarify service restrictions and documentation requirements (*Louisiana Register*, volume 27, number 10). The department decided to temporarily withdraw that proposed rule pending further evaluation by the BCSS.

This Emergency Rule is being adopted to continue the provisions contained in the October 1, 2001 Rule.

**Emergency Rule**

Effective January 30, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the provisions contained in the September 20, 1999 rule governing the programmatic allocation of waiver slots for the Mentally Retarded/ Developmentally Disabled (MR/DD) Waiver as follows.

Programmatic Allocation of Slots for MR/DD Waiver

The Bureau of Community Supports and Services (BCSS) request for services registry, formerly the MR/DD waiver

waiting list, shall be used to evaluate individuals for waiver eligibility. This request for services registry will be used to fill all waiver slots administered by the BCSS for persons with mental retardation or developmental disabilities. BCSS shall notify the next individual on the request for services registry, in writing, that a slot is available and that he/she is next in line to be evaluated for possible waiver slot assignment. The individual then chooses a case manager who will assist in the gathering of the documents needed for both the financial and medical certification eligibility process. If the individual is determined to be ineligible, either financially or medically, that individual is notified in writing. The next person on the request for services registry is notified as stated above and the process continues until an eligible person accepts a waiver slot. A waiver slot is assigned to an individual when eligibility is established and the individual is certified. Before placing a person in an appropriate slot, the person must consent to the removal of their name from the request for services registry. Utilizing these procedures, waiver slots shall be allocated to the targeted groups cited as follows.

1. A minimum of 90 slots shall be available for allocation to foster children in the custody of the Office of Community Services (OCS), who successfully complete the financial and medical certification eligibility process and are certified for the waiver. OCS is the guardian for children who have been placed in their custody by court order. OCS shall be responsible for assisting the individual in gathering the documents needed in the eligibility determination process, preparing the comprehensive plan of care, and submitting the plan of care document to Medicaid.

2. A minimum of 160 slots shall be available for residents of Pinecrest and Hammond Developmental Centers, or their alternates, who have chosen to be deinstitutionalized, who successfully complete the financial and medical certification eligibility process, and are certified for the waiver. In situations where alternates are used, an alternate shall be defined as a resident of an ICF/MR facility who choose to apply for waiver participation, is eligible for the waiver, and vacates a bed in the ICF/MR facility for an individual being discharged from a publicly operated ICF/MR developmental center. A Pinecrest or Hammond Developmental Center resident must be given freedom of choice in selecting a private ICF-MR facility placement in the area of the resident's choice in order to designate the resident being discharged from the ICF-MR facility as an alternate. The bed being vacated in the ICF/MR facility is reserved for placement of a resident of a publicly operated ICF/MR developmental center for 120 days.

3. Any slots vacated during the waiver year shall be available to residents leaving any publicly operated ICF/MR or their alternates. In situations where alternates are used, an alternate shall be defined as a resident of an ICF/MR facility who choose to apply for waiver participation, is eligible for the waiver, and vacates a bed in the ICF/MR facility for an individual being discharged from a publicly operated ICF/MR developmental center. The bed being vacated in the ICF/MR is reserved for placement of a resident of a publicly operated ICF/MR developmental center for 120 days.

4. For those individuals who do not complete the transition process and move from either a publicly operated developmental center or an ICF/MR facility during the 120 day reservation period, the waiver slot will be converted to a community slot for processing. Authorization to exceed the 120-day reservation period may be granted by the BCSS as needed.

5. Ten waiver slots shall be used for qualifying persons with developmental disabilities who are clients of the Developmental Neuropsychiatric Program (DNP) administered by Southeast Louisiana State Hospital and are participating in a pilot project between the BCSS, the Office for Citizens with Developmental Disabilities, and the Office of Mental Health. The purpose of this pilot project is to develop coordinated wrap around services for individuals who choose to participate in the waiver and who meet the financial and medical eligibility requirements for the waiver.

6. Funded slots, not addressed above, shall be available for allocation to the next individual on the BCSS request for services registry who successfully completes the financial and medical certification eligibility process and are certified for the waiver.

The Bureau of Community Supports and Services is responsible for monitoring the utilization of waiver slots. At its discretion, the BCSS may reallocate specifically allocated slots to better meet the needs of citizens with disabilities in the State of Louisiana.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, 446 North 12th Street, Baton Rouge, Louisiana 70802-4613. She is responsible for responding to all inquiries regarding this emergency rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0201#050

## DECLARATION OF EMERGENCY

### Department of Revenue
### Policy Services Division

Certain Imported Cigarettes (LAC 61:I.5101)

The Department of Revenue is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B), to adopt this emergency rule in accordance with the provisions of R.S. 13:5062(10) and R.S. 47:1511. The rule is needed to establish procedures for obtaining information for the enforcement of the conditions of the Master Settlement Agreement. This Emergency Rule is effective January 1, 2002, and will remain in effect for the maximum period allowed under the Administrative Procedure Act, or until adoption of the final rule, whichever occurs first.

In 1998, leading tobacco product manufacturers, 46 states including Louisiana, several territories and the District of Columbia, reached an agreement that settled existing and potential claims by the jurisdictions against the manufacturers. As part of the "Master Settlement Agreement," Louisiana was to implement either the model statute or a "qualifying statute" requiring escrow payments by tobacco product manufacturers who had not participated in the settlement. During the 1999 Regular Legislative Session, Act 721, effective July 1, 1999, enacted R.S.

13:5061 et seq., establishing certain requirements for tobacco product manufacturers. This Act included the requirement that nonparticipating manufacturers establish a reserve fund to guarantee a source of compensation against future health claims. The nonparticipating manufacturers are to pay into the reserve fund, or escrow account, a specified amount per unit sold during the respective year and are to annually certify to the attorney general that they are in compliance. The number of units sold is to be measured by the excise taxes collected by the state on cigarettes, including roll-your-owns, as defined at R.S. 13:5062(4). The provisions of R.S. 13:5062(10) state that the Department of Revenue shall adopt rules necessary to ascertain the amount of state excise tax paid each year on the products made by the nonparticipating tobacco manufacturers.

To obtain the requisite information, the Department of Revenue and the Tobacco Settlement Enforcement Unit of the Louisiana Department of Justice developed a schedule for reporting tobacco products made by nonparticipating manufacturers that were subsequently imported into Louisiana, either directly from the manufacturer or through a distributor, for sale, use, or consumption within this state. Since the schedule's distribution, a number of tobacco wholesale dealers have failed to comply with the Secretary's instructions to submit the schedule with their monthly return. Without complete compliance in providing the requested information to assure diligent enforcement of the provisions of R.S. 13:5061 et seq., the state of Louisiana faces the possible reduction in the payments under the Master Settlement Agreement and can be penalized for the loss of market share experienced by other participating states if such loss can be attributed to Louisiana's lack of enforcement of the provisions of the Master Settlement Agreement.

This emergency rule establishes the manner by which the information is to be provided and addresses penalties that may be imposed on registered tobacco dealers who fail to comply.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 51. Tobacco Tax**
**§5101. Reporting of Certain Imported Cigarettes; Penalty**

A. Every registered wholesale tobacco dealer receiving cigarettes or roll-you-own tobacco made by a tobacco product manufacturer who is not participating in the Master Settlement Agreement, whether the product is purchased directly from the manufacturer or through a distributor, retailer or similar intermediary or intermediaries, must furnish the following information:

1. invoice number;
2. manufacturer's name and complete address;
3. quantity of product obtained, i.e. number of cigarettes or ounces of roll-your-own tobacco as defined at R.S. 13:5062(4);
4. product brand name;
5. whether the product was shipped directly from the manufacturer;
6. name and address of the seller if other than the manufacturer; and
7. any other information that may be requested by the secretary.

B. The information required by Subsection A is to be provided on a form prescribed by the secretary and must be submitted with and at the same time as the monthly tobacco report. If, during the reporting period, there were no purchases of a product made by a manufacturer who is not participating in the Master Settlement Agreement, such is to be indicated on the prescribed form and the form attached to the monthly tobacco report.

C. Any registered wholesale tobacco dealer who fails to comply with the reporting requirement or provides false or misleading information in response to Subsection A may be subject to the suspension of any permit issued under R.S. 47:844, in accordance with R.S. 47:844(A)(4).

D. When it is determined that a registered wholesale tobacco dealer is not in compliance with this rule, the secretary shall give that wholesale dealer written notice by registered mail of the noncompliance and request compliance within 15 days. Upon a second instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to, within 10 days, show cause why the wholesale dealer's permit shall not be suspended. Upon a third instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to show cause, on a date and time set by the secretary, as to why the wholesale dealer's permit shall not be suspended. If the wholesale dealer does not comply with the terms of this rule after the hearing, the secretary shall suspend the wholesale dealer's permit for a period of at least 30 days, or until such time as the dealer has become compliant. Failure to properly respond to written notification of noncompliance shall constitute a subsequent instance of noncompliance.

E. The information furnished under Subsection A may be disclosed as provided in R.S. 47:1508(B)(11).

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5062 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 27:

Cynthia Bridges
Secretary

0201#019

## DECLARATION OF EMERGENCY

**Department of Revenue**
**Policy Services Division**

Partnership Composite Returns and Payments
(LAC 61:I.1401)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish rules, and R.S. 47:1511, which allows the department to make reasonable rules and regulations, the secretary of Revenue hereby finds that imminent peril to the public welfare exists and accordingly

adopts the following Emergency Rule. This Emergency Rule shall be effective January 1, 2002, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final rule, whichever comes first.

The rule is needed to provide guidelines to enable taxpayers to comply with the partnership composite return and payment requirements of R.S. 47:201.1 that go into effect January 1, 2002. Without these guidelines, taxpayers who are unable to comply will be subject to interest and penalties.

Act 21 of the 2000 Second Extraordinary Session of the Louisiana Legislature enacted R.S. 47:201.1 to require certain partnerships and limited liability companies with nonresident partners or members to file composite returns and make composite payments of tax for nonresident partners or members who do not agree to file and pay Louisiana income tax on their own behalf. This emergency rule will provide guidance concerning which partnerships and limited liability companies must file composite returns and make composite payments; when composite returns and payments are due; which partners or members are to be included on the composite return; and how partners or members who do not wish to be included in a composite return can enter into an agreement with the Department of Revenue to file and pay on their own behalf. This emergency rule will also allow certain publicly traded partnerships to request the Secretary's permission to file a composite return and make a composite payment on behalf of all partners of the partnership, including residents and corporations.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 14. Income: Partnerships**
**§1401. Partnership Composite Return Requirement, Composite Payment Requirement, Exceptions**

A. Definitions. For the purpose of this rule, the following terms are defined.

*Corporation*—an entity that is treated as a corporation for state income tax purposes as set forth in R.S. 47:287.11(A).

*Engaging in Activities in this State*—having payroll, sales, or tangible property in this state, or intangible property with a Louisiana business situs.

*Individual Return*—a Louisiana personal income tax return or a Louisiana fiduciary income tax return.

*Nonresident*—any person not domiciled, residing in, or having a permanent place of abode in Louisiana.

*Partner*—a member or partner of an association that is treated as a partnership for state income tax purposes, including but not limited to, a member in a limited liability company or a partner in a general partnership, a partnership in commendam, or a registered limited liability partnership. A partner is the ultimate owner of a partnership interest; therefore someone holding or managing a partnership interest on behalf of another, such as a broker, is not a partner for purposes of this rule.

*Partnership*—any association that is treated as a partnership for state income tax purposes including, but not limited to, a general partnership, partnership in commendam, a registered limited liability partnership, or a limited liability company. Because of R.S. 47:287.11(A), the above listed business associations that do not elect to be taxed as corporations for federal income tax purposes are treated as partnerships for Louisiana income tax purposes.

B. Persons to be Included in a Composite Return

1. Partnerships engaging in activities in this state that have nonresident partners are required to file a composite partnership return unless:

a. all nonresident partners are corporations or tax exempt trusts; or

b. all nonresident partners, other than corporations and tax exempt trusts, have a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state.

2. Unless otherwise provided herein, corporate partners cannot be included in composite returns filed by a partnership. Corporate partners must file all applicable Louisiana tax returns, and must report all Louisiana source income, including income from the partnership in those returns.

3. Resident partners, other than corporations and tax-exempt trusts, may be included in a composite return.

4. A partnership that is a partner must be included in the composite return, unless that partner files an agreement with the partnership agreeing to file a composite return that reflects the Louisiana source income from the partnership of which it is a partner.

C. Composite Return Requirements

1. All nonresident partners, other than partners that are corporations or tax-exempt trusts, who were partners at any time during the taxable year and who do not have a valid agreement on file with the Department of Revenue must be included in the composite partnership return.

2. The due date of the composite return is the due date set forth for all income tax returns other than corporate returns.

3. A schedule must be attached to the composite return that includes the following information for every nonresident partner in the partnership:

a. the name of the partner;

b. the address of the partner;

c. the taxpayer identification number of the partner;

d. the partner's distributive share; and

e. whether or not that partner has an agreement on file with the Department of Revenue to file an individual return on his or her own behalf.

4. If a resident partner is included in the partnership's composite return, a schedule must be attached to the composite return that includes the following information for every resident partner included in the partnership composite return:

a. the name of the partner;

b. the address of the partner;

c. the taxpayer identification number of the partner;

d. the partner's distributive share.

5. The filing of a true, correct, and complete partnership composite return will relieve any nonresident partner properly included in the composite return from the duty to file an individual return, provided that the nonresident partner does not have any income from Louisiana sources other than that income reported in the

composite return. Inclusion in a partnership composite return shall not relieve a resident partner of the obligation to file a Louisiana income tax return.

6. Filing requirement the first year the partnership is subject to the composite return rules and issuance of special identification number. Every partnership that engages in activities in this state and that has nonresident partners will make an initial filing with the department.

a. Each partnership that is required to file a composite return will file its first composite return and make its first composite payment by the composite return due date. The partnership will be issued an identification number by the department upon its initial filing. This identification number shall be used on all partnership correspondence with the department, including subsequent composite returns filed by that partnership.

b. Each partnership that is not required to file a composite return because all its partners have filed agreements to file on their own behalf, must make an initial filing in which it files all agreements with the department of Revenue by the composite return due date. The partnership will be issued an identification number by the department upon its initial filing. This identification number shall be used on all partnership correspondence with the department, including the filing of additional agreements.

D. Composite Payment Requirement

1. All partnerships engaging in activities in this state that have nonresident partners that are not corporations or tax-exempt trusts shall make composite payments on behalf of all of their nonresident partners, other than corporate partners, who do not file an agreement to file an individual return and pay Louisiana income tax.

2. The composite payment is due on the earlier of the date of filing of the composite return or the due date of the composite return, without regard to extensions of time to file. An extension of time to file the composite return does not extend the time to pay the composite payment.

3. Each partner's share of the composite payment is the maximum tax rate for individuals multiplied by the partner's share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. The composite payment to be made by the partnership is the sum of each partner's share of the composite payment for all partners included in the composite return.

5. For a nonresident partner whose only Louisiana income is from the partnership, amounts paid by the partnership on that partner's behalf will be treated as a payment of that partner's Louisiana individual income tax liability.

6. If a partner has any Louisiana source income in addition to the income from the partnership, amounts paid by the partnership on that partner's behalf will be treated as an advance payment of the tax liability shown on that partner's individually filed return.

E. Nonresident partner's agreement to file an individual return.

1. No composite return or composite payment is required from a partnership on behalf of a partner who has a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state.

2. The partner will execute the agreement and transmit the agreement to the partnership, on or before the last day of the month following the close of the partnership's taxable year.

3. The partnership will file the original agreement with the composite return filed for that taxable year. The partnership must keep a copy of the agreement on file.

4. The agreement must be in writing, in the form of an affidavit and must include all of the following:

a. a statement that the taxpayer is a nonresident partner or member;

b. the partner's name;

c. the partner's address;

d. the partner's social security number or taxpayer identification number;

e. the name of the partnership;

f. the address of the partnership;

g. the partnership's federal taxpayer identification number;

h. a statement that the taxpayer agrees to timely file a Louisiana individual income tax return and make payment of Louisiana individual income tax;

i. a statement that the taxpayer understands that the Louisiana Department of Revenue is not bound by the agreement if the taxpayer fails to abide by the terms of the agreement;

j. the statement that "under penalties of perjury, I declare that I have examined this affidavit and agreement and to the best of my knowledge, and belief, it is true correct and complete;" and

k. the signature of the partner.

5. Once an agreement is signed by the partner, transmitted to the partnership, and the partnership has filed the agreement with the Department of Revenue, the agreement will continue in effect until the partner or the Department of Revenue revokes the agreement, or the partner is no longer a partner in the partnership.

6. The agreement may be revoked by either the partner or the Department of Revenue as follows.

a. The partner may revoke the agreement at will. However, this revocation does not become effective until the first partnership tax year following the partnership tax year in which the revocation is transmitted to the partnership. The partner must send written notice of the revocation to the partnership. The partnership will forward the notice to the Department of Revenue. The partner may execute a new agreement, in the manner set forth in this Subsection, at any time.

b. The Department of Revenue may revoke the agreement only if the partner fails to comply with the terms of the agreement. This revocation is prospective only with respect to the partnership, and does not become effective until the first partnership tax year following the partnership tax year in which the revocation is transmitted to the partnership. The Department of Revenue must send written notice of the revocation to the partner and the partnership. The notice will be mailed to the partnership at the address given in the last return or report filed by the partnership. The notice will be mailed to the partner at the address provided in the agreement. If the Department of Revenue revokes an

agreement, the department may refuse to accept a subsequent agreement by that partner, unless the partner can show that the revocation was in error.

F. A partnership making a composite return and payment must furnish the following information to all partners included in the composite return:

1. The identification number that was issued to the partnership by the department under Subparagraph B.6.b above;

2. The amount of the payment made on the partner's behalf;

3. A statement that the amount paid on the partner's behalf can be used as an advance payment of that partner's Louisiana individual income tax liability for the same tax period;

4. The mailing address of the Louisiana Department of Revenue; and

5. The world wide web address of the Louisiana Department of Revenue, www.rev.state.la.us.

G. Additional Provisions for Publicly Traded Partnerships

1. A publicly traded partnership, that is not treated as a corporation for federal income tax purposes may elect, with the prior approval of the secretary:

a. not to accept agreements filed by partners under the provisions of Paragraph B.4 or Subsection E above; and

b. to include all partners in its composite return and composite payment required by this section, including corporations and tax-exempt trusts.

2. This election must be applied for in writing and approved in writing by the secretary. Once approval is granted, the election will remain in effect until revoked by the partnership.

3. The composite payment to be made by the publicly traded partnership is the sum of each partner's share of the composite payment for all partners. Each partner's share of the composite payment is the maximum individual income tax rate multiplied by the partner's share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. Inclusion in a partnership composite return filed by a publicly traded partnership shall not relieve resident partners, corporate partners, or nonresident partners who have other Louisiana source income of the obligation to file all applicable Louisiana tax returns, and report all Louisiana source income, including income from the partnership.

H. Nothing in this regulation shall restrict the secretary's authority to otherwise provide for efficient administration of the composite return and composite payment requirements of R.S. 47:201.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:201.1 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:

Cynthia Bridges
Secretary

0201#034

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries
### Office of Fisheries

Experimental Fisheries Programs Permits
(LAC 76:VII.701)

The Secretary of the Department of Wildlife and Fisheries does hereby exercise the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, and pursuant to its authority under R.S. 56:571, adopts the rule as set forth below. This emergency rule is necessary to adopt changes to the rule governing the take of underutilized species of fish. Recent court decisions have indicated that certain provisions in the experimental fisheries program are not enforceable. Without the proposed modifications to the rule, no new permits will be issued. Commercial fishermen will be unable to utilize the permitting program, thus directly impacting their welfare. Additionally, the welfare of the crawfishermen dependant on utilizing bait caught through this program will also be affected. New permits are issued on a calendar year basis and in order to have the changes effective in time to issue new permits, utilization of the Declaration of Emergency is necessary.

This declaration of emergency shall become effective January 1, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

**Title 76**
**WILDLIFE AND FISHERIES**
**Part VII. Fish and Other Aquatic Life**
**Chapter 7. Experimental Fisheries Programs**
**§701. Permits**

A - B.9. …

10. Permitted vessel and permitted gear is the specific gear and vessel designated on the permit.

11. When a permit is issued, only the permitted species can be retained. All other species shall be immediately returned to waters from which they were caught. No other fish may be in the possession of the permittee and all fish on board the permitted vessel shall have the head and caudal fin (tail) intact.

12. The permittee shall have the permit in possession at all times when using permitted gear or harvesting permitted species Permit holder shall be on board permitted vessel when operating under conditions of permit. No permit is transferable without written permission from the department secretary.

13. When permitted gear is on board permitted vessel or in possession of permittee, permittee and vessel are assumed to be operating under conditions of the permit. No gear other than permitted gear may be on board or in possession of permittee.

14. If citation(s) are issued to any permittee for violation of a Class Two fish or game law or conditions regulated by the permit, all permittees' permits shall be suspended until such time as the permittee appears before the department's officials for the purpose of reviewing the

citation(s) issued. The Secretary, after reviewing the proceedings, may reinstate or revoke the permit, and the permittee may lose all rights and privileges to participate in the program.

15. Any violation of the conditions of the permit shall result in the immediate suspension of the permit and forfeiture of the deposit and may result in the permanent revocation of the permit.

C B D.8. …

9. The Harvest of Shad (*Dorosoma sp.)* and skipjack (*Alosa chrysochloris)* with an Experimental Seine

a. Closed Seasons, Times and Areas

i. The season for the commercial taking of shad and skipjack under the provision of the experimental seine permit shall be closed during the months of July, August, September, and October of each year. Shad and skipjack may not be taken commercially with an experimental seine at any time outside of this season.

ii. Commercial harvest of shad and skipjack with an experimental seine under the provisions of this section shall not be allowed on Saturday and Sunday. There shall be no commercial taking of shad and skipjack with an experimental seine during the period after sunset and before sunrise.

iii. Experimental seines shall not be used in areas closed to seining.

b. Commercial Taking

i. Only shad and skipjack may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permitted and all fish on board of the permitted vessel shall have the head and caudal fin (tail) intact.

ii. An experimental seine is a seine with a mesh size not less than 1@ bar and 2@ stretched and not more than 2" bar and 4" stretched, not exceeding 1200 feet in length. The experimental seine may not be constructed of monofilament.

iii. Only "strike" fishing will be permitted; this means the school of fish to be taken must be visible from the surface and the seine then placed around the selected school.

iv. The use of more than one experimental seine from any one or more vessels at any time is prohibited.

v. No more than two vessels may fish an experimental seine at one time.

vi. Experimental seines shall not be used in a manner that unduly restricts navigation of other vessels.

vii. Net shall not be left unattended as defined in Title 56. Experimental seine shall be actively fished at all times by the permittee.

viii. Each experimental seine shall have attached to each end a 1-gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number shall be legibly displayed on the jug.

ix. The permitted gear shall only be fished in the freshwater areas of the state.

x. All provisions of Title 56 shall apply to persons involved in any experimental fishery or possessing any commercial gear.

c. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of shad and skipjack by properly licensed and permitted fishermen.

d. Permits

i. Any person who has been convicted of an offense under the provisions of the experimental fishery permit program shall not participate in the harvest, in any manner, of fish taken under an experimental permit.

ii. No person shall receive more than one experimental seine permit to commercially take shad and skipjack.

iii. This permit along with other applicable licenses authorize the bearer to sell his shad and skipjack herring.

iv. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in Title 56.

v. The permitted gear must be properly licensed as a fish seine.

e. General Provisions. Effective with the closure of the season for using the experimental seine permit for shad and skipjack, the possession of the experimental seine on the waters of the state shall be prohibited. Nothing shall prohibit the possession, sale, barter or exchange off the water of shad and skipjack legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

10. Shad (*Dorosoma sp.)* and Skipjack (*Alosa chrysochloris)* Gill Net Permit (Lake Des Allemands Only)

a. Closed seasons, Times and Areas

i. The season for the commercial taking of shad and skipjack under the provision of the experimental gill net permit shall be closed during the months of July, August, September and October of each year. Shad and skipjack may not be taken commercially with an experimental gill net at any time outside of this season.

ii. Commercial harvest of shad and skipjack with an experimental gill net under the provisions of this section shall not be allowed on Saturday and Sunday. There shall be no commercial taking of shad and skipjack with an experimental gill net during the period after sunset and before sunrise.

iii. Experimental gill net shall not be used in areas closed to gill netting.

b. Commercial Taking

i. Only shad and skipjack may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permitted and all fish on board of the permitted vessel shall have the head and caudal fin (tail) intact.

ii. An experimental gill net is a gill net with a mesh size not less than 1" bar and 2" stretched and not more than 2" bar and 4" stretched, not exceeding 1200 feet in length.

iii. Only "strike" gill net fishing will be permitted; this means the school of fish to be taken must be visible from the surface and the gill net then placed in or directly near the selected school. Once deployed, the experimental gill net is to remain stationary until being run (gill net remains in place while fish are removed) or gill net is retrieved (gill net remains in place until lifted into boat).

iv. The use of more than one experimental gill net from any one or more vessels at any time is prohibited.

v. No more than two vessels may fish an experimental gill net at one time.

vi. Experimental gill net shall not be used in a manner that unduly restricts navigation of other vessels.

vii. Net shall not be left unattended as defined in Title 56.

viii. Each experimental gill net shall have attached to each end a 1-gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number shall be legibly displayed on the jug.

ix. The permitted gear shall only be fished in Lac Des Allemands. Streams, bayous, canals and other connecting waterbodies are not included in this permit.

x. All provisions of Title 56 shall apply to persons involved in any experimental fishery or possessing any commercial gear.

c. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of shad and skipjack by properly licensed and permitted fishermen.

d. Permits

i. Any person who has been convicted of an offense under the provisions of the experimental fishery permit program shall not participate in the harvest, in any manner, of fish taken under an experimental permit.

ii. No person shall receive more than one gill net permit to commercially take shad and skipjack.

iii. This permit along with other applicable licenses authorize the bearer to sell his shad and skipjack herring.

iv. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in Title 56.

v. The permitted gear must be properly licensed as a freshwater gill net.

e. General Provisions. Effective with the closure of the season for using the experimental gill net permit for shad and skipjack, the possession of the experimental gill net on the waters of the state shall be prohibited. Nothing shall prohibit the possession, sale, barter or exchange off the water of shad and skipjack legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

11. Experimental Freshwater River Shrimp (*Macrobrachium ohione)* Permit

a. May experimentally fish a wire mesh shrimp net, 1/4 inch bar, 6 feet in length in the Intercoastal Canal and Mississippi River within 1.5 miles of the boat ramp adjacent to the locks in Port Allen.

b. Only freshwater river shrimp may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permittee.

c. The permittee shall have the permit in possession at all times when using permitted gear; permittee shall be on board permitted vessel when operating under conditions of permit.

d. The permitted gear must be properly licensed as a Shrimp Trawl and may be fished in freshwater areas only.

e. Permitted gear must be marked using a 1 gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number should be legibly displayed on the jug.

f. This permit may be canceled at any time if, in the judgment of the Secretary or his designee, the permit is being used for purposes other than that for which the permit was issued.

g. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in Title 56.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:571.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 12:119 (February 1986), LR 12:847 (December 1986), amended by the Office of Fisheries, LR 15:1098 (December 1989), LR 28:

James H. Jenkins, Jr.
Secretary

0112#017

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries
### Wildlife and Fisheries Commission

2001 Fall Shrimp Season Extension

In accordance with emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967, and in accordance with R.S. 56:497A(9), which allows the Wildlife and Fisheries Commission to delegate authority to the Secretary of the Department to set seasons, and in accordance with the resolution adopted by the Wildlife and Fisheries Commission at its August 2001 meeting, which granted authority to the Secretary of the Department to change the closing date of the 2001 Fall Inshore Shrimp Season, notice is hereby given that the Secretary of the Department of Wildlife and Fisheries declares that the 2001 fall inshore shrimp season in Shrimp Management Zone 1 will close at sunset, Monday, December 31, 2001, except for that portion of Zone 1 extending north of the south shore of the Mississippi River Gulf Outlet, including Lake Pontchartrain and Lake Borgne, which shall close at 6:00 a.m., Friday, January 11, 2002.

James H. Jenkins, Jr.
Secretary

0201#015

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries
### Wildlife and Fisheries Commission

2002 Commercial King Mackerel Season

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

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2002, and remain open until the allotted portion of the commercial king mackerel quota for the western Gulf of Mexico has been harvested or projected to be harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to close the commercial king mackerel season in Louisiana state waters when he is informed by the National Marine Fisheries Service (NMFS) that the commercial king mackerel quota for the western Gulf of Mexico has been harvested or is projected to be harvested, such closure order shall close the season until 12:01 a.m., July 1, 2003, which is the date expected to be set for the re-opening of the 2003 commercial king mackerel season in federal waters.

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

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

Thomas M. Gattle, Jr.
Chairman

0112#029

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries
### Wildlife and Fisheries Commission

2002 Commercial Red Snapper Season

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

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

The season for the commercial fishery for red snapper in Louisiana state waters will open at 12 noon February 1, 2002. The commercial fishery for red snapper in Louisiana waters will close at 12 noon February 10, 2002, and thereafter open at 12 noon on the first of each month and close at 12 noon on the tenth of each month, for each month of 2002 until 2/3 of the 2002 commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to set the closing date for the commercial red snapper season in Louisiana state waters when he is informed that 2/3 of the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested, such closure order shall close the season until 12 noon October 1, 2002, which is the date expected to be set for the re-opening of the 2002 commercial red snapper season in Federal waters.

The season for the commercial fishery for red snapper in Louisiana state waters will re-open at 12 noon October 1, 2002. The commercial fishery for red snapper in Louisiana waters will close at 12 noon October 10, 2002, and thereafter open at 12 noon on the first of each month and close at 12 noon on the tenth of each month for each month of 2002, until the remainder of the 2002 commercial quota is harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to set the closing date for the commercial red snapper season in Louisiana state waters when he is informed that the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested; such closure order shall close the season until the date set for the opening of the year 2003 commercial red snapper season in federal waters.

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

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

Thomas M. Gattle, Jr.
Chairman

0112#027

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries
### Wildlife and Fisheries Commission

2002 Recreational Red Snapper Season

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. Rules were established by NMFS to close recreational harvest season in the EEZ off of Louisiana effective midnight October 31, 2001, until 12:01 a.m., April 21, 2002, by reducing the bag limit to zero, and NMFS requested that consistent regulations be established in Louisiana waters. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana waters for the 2002 recreational red snapper season, it is necessary that emergency rules be enacted.

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

The season for the recreational fishery for red snapper in Louisiana state waters will remain closed until 12:01 a.m., April 21, 2002 by reducing the bag limit to zero for that time period. The season will open April 21, 2002 and continue until midnight October 31, 2002. If the secretary is notified that the opening and closing of Federal seasons is changed, he is hereby authorized to change the opening and closing dates for state waters accordingly.

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

Thomas M. Gattle, Jr.
Chairman

0112#028

# Rules

## RULE

**Department of Agriculture and Forestry**
**Office of Agriculture and Environmental Sciences**
**Advisory Commission on Pesticides**

Advisory Commission on Pesticides
(LAC 7:XXIII.121, 125, and 129)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, has amended regulations regarding the examinations of applicators, certification of commercial applicators and agricultural consultants.

The amendments clarify and accurately indicate the intent of the regulations. The test scores are in percentage, certification shall be renewed and the consultants are controlling pests.

These Rules comply with and are enabled by R.S. 3:3203 and R.S. 3:3223.

**Title 7**
**AGRICULTURE AND ANIMALS**
**Part XXIII. Pesticide**
**Chapter 1. Advisory Commission on Pesticides**
**Subchapter E. Applicators, Salespersons and Agricultural Consultants**

**§121. Examinations of Applicators, Salespersons and Agricultural Consultants**

A. The minimum score necessary for successful completion of examinations for certifications under these Rules shall be 70 percent.

B. The director, in cooperation with the director of the Cooperative Extension Service or his designee, shall be responsible for the preparation of all examinations.

C. The director shall be responsible for the administration and grading of all examinations.

D. Each applicant who fails to receive a passing score on any test in any category or subcategory shall wait a minimum of 10 days before being eligible for re-examination.

E. No person shall be allowed to take an examination in any category more than three times in a 12-month period.

F. Louisiana citizens who have failed any examinations under these standards shall not be permitted to receive certification under a reciprocal agreement with another state.

G. All applicants for private applicators' certification must be at least 16 years of age or an emancipated minor. All applicants for salesperson certification must be at least 18 years of age or an emancipated minor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3241 and 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 11:943 (October 1985), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 28:39 (January 2002).

**Subchapter F. Certification**

**§125. Certification of Commercial Applicators**

A. - D. …

E. Each person that has been certified in any category or subcategory as a commercial applicator, and whose certification has not been revoked or suspended, shall renew that certification by attending a recertification meeting or training course for that category as designated by the commissioner.

F. The commissioner shall issue a certification card to each commercial applicator showing the categories or subcategories in which the applicator is certified. This certification card shall expire on December 31 of each year. Each person wishing to renew a certification card shall do so by submitting an application form prescribed by the commissioner and by submitting the proper fee.

G. Each person who is certified as a commercial applicator need not be certified as a private applicator or a pesticide salesperson to apply or supervise the application of any restricted use pesticide as a private applicator, or to sell or supervise the sale of restricted use pesticides.

AUTHORITY NOTE: Promulgated in accordance with RS. 3:3203, R.S. 3:3242 and R.S. 3:324.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:193 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 19:735 (June 1993), LR 20:641 (June 1994), LR 21:928 (September 1995), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 23:193 (February 1997), LR 24:280 (February 1998), LR 28:39 (January 2002).

**§129. Certification of Agricultural Consultants**

A. - D.2.a.i. ...

ii. Forest Entomology. Making recommendations for the control of forest pests.

iii. Household, Structural and Industrial Entomology. Making recommendations for the control of household pests, structural and industrial pests (such as termites, in stores, warehouse and transportation facilities).

iv. Medical, Veterinary and Public Health Entomology. Making recommendations for control of arthropods affecting man and animals.

v. Orchard and Nut Tree Entomology. Making recommendations for the control of orchard pests.

vi. Ornamental Entomology. Making recommendations for the control of pests of ornamentals, lawns, turf and shade trees.

b. Control of Plant Pathogens (Category 2).

i. Agricultural Plant Pathology. Making recommendations for the control of diseases of agronomic crops, especially sugarcane, cotton, rice, soybeans and home garden plants.

ii. Turf, Ornamental, Shade-tree and Floral Plant Pathology. Making recommendations for the control of diseases of turf, ornamentals, shade-trees and floral plants. Also includes greenhouse and nursery plant disease control.

iii. Forest Pathology. Making recommendations for the control of diseases of trees in plantations, nurseries and managed or unmanaged forests wherein the principal value lies in the production of wood fiber.

iv. Orchard Pathology. Making recommendations for the control of diseases of wood vines and trees wherein the principal value lies in the production of fruits or nuts.

c. Control of Weeds (Category 3).

i. Agricultural Weed Control. Making recommendations for the control of weeds and grasses in field crops, vegetable crops, pastures and rangeland.

ii. Turf, Ornamental and Shade-Tree Weed Control. Making recommendations for the control of weeds and grasses in ornamentals, turf areas, cemeteries and other similar areas.

iii. Forest Weed Control. Making recommendations for the control of weeds and grasses in forest lands.

iv. Right-of-Way and Industrial Weed Control. Making recommendations for the control of weeds and grasses in and around industrial and commercial sites.

d. Soil Management (Category 4).

i. Agricultural Field Soil Management. Knowledgeable in symptoms of soil and/or tissue nutrient problems; sampling techniques for soil and/or tissue analysis; interpretation of laboratory results; and recommendations for soil and/or tissue amendments.

ii. Agricultural Soil, Water and Tissue Laboratory Analysis. Knowledge of all diagnostic procedures pertaining to analysis of soil, water and/or tissue samples.

iii. Agricultural Soil Reclamation. Knowledge of techniques, methods, etc. for restoring or attempting to restore soil productivity as a result of physical and/or chemical disturbance or natural causes such as severe erosion or contaminated soils.

iv. Agricultural Water Management. Knowledge of irrigation scheduling practices and techniques for various enterprises requiring water on a regular or intermittent basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3246 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 11:943 (October 1985), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 24:281 (February 1998) amended LR 28:39 (January 2002).

Bob Odom
Commissioner

0201#071

## RULE

## Department of Civil Service
## Division of Administrative Law

Hearing Procedures C Adjudication
(LAC 1:III.Chapters 1-7)

In accordance with R.S. 49:950 et seq., that the Division of Administrative Law, pursuant to authority vested in the Director by R.S.49:996(7) and in accordance with applicable provisions of the Administrative Procedure Act, has adopted Rules establishing hearing procedures to regulate DAL adjudications. These Rules are intended to supplement procedures already existing in the Administrative Procedure Act.

## Title 1
## ADMINISTRATIVE LAW
## Part III. Division of Administrative Law
### Chapter 1. General Rules

**§101. Purpose**

A. Adjudications conducted by the Division of Administrative Law shall be governed by the Administrative Procedure Act (APA), R.S. 49:950 et seq., and the Division of Administrative Law Act (DALA), R. S. 49:991 et seq. To the extent that these Rules are not in conflict with other statutory authority, they establish additional procedures for regulating adjudications conducted by the Division. These Rules are not intended to be a comprehensive guide for Division hearings but are intended only as a supplement to the APA and the DALA. Adjudications conducted pursuant to federal law or R.S. 49:999.1, may be governed by other rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002).

**§103. Definitions**

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular section.

*Administrative Hearings Clerk* C the person who, directly or through his/her designee, maintains custody of and receives filings to the adjudicatory record for the Division.

*Division* C the Division of Administrative Law.

*Pleading* C a petition, motion, response, request or any statement of position filed in connection with an adjudication or appeal.

*Referring Agency* C the state agency for which an adjudicatory hearing is being held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002).

**§105. Conflicts**

A. Except as otherwise required by law, this Chapter shall govern procedures used in Division adjudications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002).

**§107. Severability**

A. If any provision of these Rules, or the application thereof, is held to be invalid, the remaining provisions shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these Rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002).

**§109. Computation of Time**

A. In computing any period of time prescribed or allowed in these Rules, except where otherwise required by law, the day on which the designated period begins shall not be included. The last day of the designated period shall be included unless it is a Saturday, Sunday, or a legal holiday as provided in R.S. 1:55, in which event the designated period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

## Chapter 3. Filing and Notices

**§301. Administrative Hearings Clerk**

A. The administrative hearings clerk shall be the official custodian of adjudicatory records for the Division. The clerk shall certify copies of official documents in his/her custody; distribute decisions, recommendations, orders, subpoenas, and notices issued by the administrative law judges; and perform other duties as assigned by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

**§303. Docket Number**

A. At the time a request for docketing or hearing is received by the Division, the matter shall be assigned a docket number. The docket number shall be used on all subsequent pleadings, amendments or supplements filed in the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

**§305. Official Recordings; Copies of Official Recordings; Transcripts**

A. The Division shall make an official recording of the hearing.

B. Copies of tapes shall be available for purchase from the administrative hearings clerk.

C. A verbatim transcript shall be made when requested by a party or required by law. Requests for a transcript shall be in writing and submitted to the administrative hearings clerk. The administrative hearings clerk will furnish an estimate of the transcription costs. The estimated costs must be paid before the recording will be transcribed. Actual costs must be paid in full before delivery of the transcript.

D. When a transcript of any part of the proceeding has been made, the original shall be filed into the adjudicatory record.

E. Copies of public records held by the Division may be purchased pursuant to Division of Administration regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

**§307. Filing of Pleadings and Documents**

A. Any pleading, document or other item which is being filed into the adjudicatory record shall be filed by hand delivery, mail, or if less than 25 pages, by facsimile transmission with the administrative hearings clerk.

B. Unless otherwise provided by law, all pleadings, documents or other items shall be deemed filed on the date received by the administrative hearings clerk. Receipt of a filing by facsimile transmission on or before the due date shall be considered as timely filed, provided the original document is filed into the adjudicatory record within five working days of receipt of the facsimile.

C. Parties requesting discovery shall serve such requests on any other party, his/her counsel of record, or other designated representative, but discovery requests shall not be filed in the record of the proceedings. The party responsible for service of the discovery materials shall retain the original and become the custodian of such materials. The provisions of this Section shall not be construed to preclude the filing of any discovery materials as exhibits or as evidence in connection with a motion or hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

**§309. Notices**

A. This section shall apply to notices of hearings, orders, decisions and other pertinent documents sent by the Division.

B. Notices shall be sent by regular mail unless otherwise required by law. Notices may be sent to the counsel of record only. Otherwise, notices are sent to the party's last known address as filed in the adjudicatory record. Parties shall promptly send address changes to the Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

**§311. Pleadings—Form and Content**

A. Unless otherwise required by law, pleadings should:

1. state the name, mailing address and telephone number of the person filing the pleading, and his/her attorney bar roll number, if applicable;

2. be legibly written in ink, typewritten or printed with one-inch top, bottom and side margins and should be on strong durable white paper, no larger than 8 1/2 by 11 inches;

3. be divided into separately numbered paragraphs and double-spaced;

4. state clearly, concisely and particularly all relevant facts that support the relief sought;

5. state the relief sought;

6. when appropriate, identify any statute, regulation, rule, written statement of law or policy, decision, order, permit, or license and the particular aspect of each upon which the pleading relies;

7. be signed in ink by the party filing same or by his or her duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he or she has read the document and that, to the best of his or

her knowledge, information and belief, every statement contained in the document is true; and

8. certify that service has been made in accordance with these Rules.

B. The heading should be similar in format to and shall include the information contained in the following example:

STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW

| | | |
|---|---|---|
| DEPARTMENT OF _____ | * | |
| | * | |
| | * | |
| IN THE MATTER OF | * | DOCKET NO. : |
| | * | |
| | * | |

(TITLE OF PLEADING)

C. The certificate of service should be similar in format to and shall include the information contained in the following example:

I certify that a copy of this document has been sent to all parties of record by (mail, fax, hand delivery) on this __ day of ___, 200_.

D. Failure to comply with this Section shall not invalidate the pleadings, but the administrative law judge shall have discretion to rule whether pleadings are in substantial compliance with this Section, to require the amendment or supplementation of any pleading, or to take such other action as may be appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

**§313. Service of Pleadings**

A. Except where otherwise required by law, on or before the day that a pleading is filed with the administrative hearings clerk, service of same shall be made by the party who prepared the pleading, upon all other parties, attorneys or designated representatives by hand delivery, mail or facsimile transmission to the recipient at the number designated for facsimile transmission.

B. Unless otherwise provided herein, service by mail or by facsimile transmission is effective on the date mailed or transmitted. Personal or domiciliary service is effective when delivered or tendered, even if delivery is refused.

C. When a party is represented by an attorney or other designated representative or has appointed an agent for service of process, notice may be given to the party through the attorney, other designated representative or agent.

D. Service on a party or person shall be given at the last known address filed into the adjudicatory record. Any party or person shall timely file into the adjudicatory record notice of any change of address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

## Chapter 5. Adjudications

**§ 501. Administrative Law Judge: Regulating Adjudications**

A. The administrative law judge shall have the authority to regulate the course of the proceedings and maintain order in accordance with R.S. 49:994.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

**§503. Commencement of Adjudications**

A. A case is commenced for purposes of this Chapter upon the filing of a docketing or hearing request with the administrative hearings clerk by a party or a referring agency accompanied by a notice of violation or request for a hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

**§505. Location of Hearings**

A. Hearings will be held in the venue required by statute.

B. Department of Public Safety, Office of Motor Vehicle hearings held pursuant to R.S. 32:661 et seq., will be scheduled in one of the following regions: where the arrest was made, where the attorney is located, or where the police officer is assigned if the officer is subpoenaed.

C. Unless a statute requires otherwise, the location of hearings will be determined by the Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

**§507. Telephone Hearings**

A. The administrative law judge may designate that all or any portion of a proceeding be conducted by telephone, unless prohibited by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

**§509. Representation**

A. Parties shall have the right to retain counsel but shall not be required to do so. Counsel seeking to withdraw from the representation of a party shall file a Motion to Withdraw. Leave to withdraw shall not be withheld unreasonably.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

**§511. Consolidation**

A. When two or more adjudications involving common issues of law or fact are separately pending before the Division, the administrative law judge, upon his or her own motion or that of any party, at any time prior to the adjudicatory hearing, may order the consolidation of the matters or may order a joint hearing on any of the common issues. If the matters are pending before two or more administrative law judges, the approval of each administrative law judge is required. The matter with the

higher docket number shall be transferred to the administrative law judge to whom the matter with the lower docket number was assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

**§513. Separation of Actions**

A. Upon motion of the administrative law judge or of any party, the administrative law judge may separate actions, which were cumulated or consolidated if separation would simplify the proceedings, permit a more orderly disposition of the matter, or otherwise be in the interest of justice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

**§515. Continuances**

A. Except where otherwise prohibited by law, a continuance may be granted in any case for good cause shown. Motions for continuance should be in writing.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

**§517. Motions**

A. Any party may file motions relating to an adjudication.

B. Except as otherwise permitted by the administrative law judge, all motions, other than those made during a hearing or conference, shall be submitted in writing and served on all parties as provided in §313 of these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

**§519. Subpoenas**

A. The Division shall order the issuance of a subpoena upon written request of a party and compliance with the requirements of this Rule.

B. Unless otherwise provided, to request the issuance of a subpoena, the following procedure shall be followed.

1. The subpoena shall be prepared and served by the requestor who shall file the return of service into the adjudicatory record. In Department of Public Safety/Office of Motor Vehicles cases a law enforcement officer subpoena shall be prepared by the administrative hearings clerk and delivered to the appropriate law enforcement agency to be served upon the law enforcement officer witness.

2. A request on behalf of any party shall be accompanied by a check or money order to cover witness fees pursuant to R.S. 49:956(5), R.S. 13:3662.A (law enforcement officers), LAC 55.III.201, or other applicable law. Witness fees for experts shall be set by the administrative law judge in accordance with R.S. 49:950 et seq. The check or money order shall be made payable to each witness subpoenaed, or as provided for law enforcement witnesses.

3. Additional witness fees must be submitted in order for a subpoena to be reissued due to a continuance or other reason.

4. The subpoena should include the following:

a. the heading contained in §311.B of these Rules;

b. the name of the party and the representative or attorney requesting the subpoena;

c. the docket number of the case;

d. the complete name, service address (with directions if necessary), and telephone number of the person being subpoenaed;

e. a sufficient description of any document or item to be produced; and

f. the date, time, place and proceeding for which the subpoena is requested.

C. A subpoena adapted from the Louisiana Code of Civil Procedure formulary is acceptable. Sample subpoena forms are available from the administrative hearings clerk.

D. Failure of a witness to appear or respond to a subpoena will not be grounds for a continuance or dismissal unless Paragraph B.1 above has been complied with, and the request for the subpoena was received by the Division at least 10 days before the date required for appearance, production or inspection. However, the administrative law judge may grant a continuance when the interest of justice requires it.

E. Only the administrative law judge may dismiss a witness who appears at a hearing pursuant to a subpoena issued by the Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

**§521. Discovery**

A. Any party to a proceeding may conduct discovery in all manners as provided by law in civil actions as provided by R.S. 49:956.

B. In the interest of administrative economy, the parties should first attempt to obtain discovery by agreement or through the Public Records Act, R.S. 44:1 et seq.

C. The administrative law judge, for good cause, may issue any order to protect a party or person from annoyance, embarrassment, oppression, disclosure of confidential information, undue burden or expense.

D. The following Section applies only in cases adjudicated pursuant to the Louisiana Implied Consent Law, R.S. 32:661 et seq.

1. Requests for discovery should be made at the same time as the request for hearing.

2. Failure to request discovery at the time the hearing request is filed may result in a continuance if a response is not timely received, but not necessarily a dismissal of the case.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

**§523. Exhibits**

A. Maps, drawings and other exhibits should not exceed 8 1/2 by 14 inches unless they are folded or reduced to the required size.

B. During the hearing, copies of exhibits should be furnished to the administrative law judge and all parties, unless the administrative law judge rules otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

**§525. Confidentiality**

A. Except as otherwise provided by law, all portions of adjudicatory records are subject to review by all parties and the general public.

B. A motion for protective order, or other request to limit discovery, may be considered as a request for confidentiality. In the event a protective order is issued or discovery is otherwise limited, the administrative law judge may designate in writing as confidential that portion of the adjudicatory record necessary to enforce the provisions of the protective order.

C. Any portion of the adjudicatory record deemed to be confidential by statutory authority should be brought to the attention of the Division in order to help ensure the confidentiality of that portion of the record.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

**§527. Prehearing Order**

A. The administrative law judge may require, prior to the adjudicatory hearing, that the parties submit a joint proposed prehearing order approved and signed by all parties or their counsel of record. Except as otherwise ordered by the administrative law judge, the proposed prehearing order should set forth the following:

1. a brief but comprehensive statement of the factual and legal contentions of each party;

2. a list of the legal authority (including statutes, code articles, regulations and cases) to be relied upon by each party at the adjudicatory hearing;

3. a detailed itemization of all pertinent uncontested facts established by pleadings, stipulations and admissions;

4. a detailed itemization of all contested issues of fact;

5. a list of all contested issues of law;

6. a list and brief description of all exhibits to be offered in evidence by each party. Exhibits to be used solely for impeachment or rebuttal need not be included on the list;

7. a list naming the fact witnesses and the expert witnesses each party may call and a short statement as to the nature of their testimony. Witnesses to be called solely for impeachment or rebuttal need not be included on the list;

8. a list of all matters to be officially noticed;

9. a statement by each party as to the estimated length of time necessary to present its case;

10. all other stipulations;

11. a list of all pending motions;

12. a statement as to any other matters that may be relevant to a prompt disposition of the case;

13. the following certification: "We hereby certify that we have conferred for the purpose of preparing this joint proposed prehearing order and that we have no objections to the contents of this prehearing order other than those attached hereto"; and this order:

"IT IS ORDERED that this matter be set for hearing at _____ o'clock, __.M. on the _____ day of _____, 20__ and to continue thereafter until completed."

_____

ADMINISTRATIVE LAW JUDGE

B. In the event that any party disagrees with the proposed prehearing order, or any part thereof, he shall attach to the order a signed statement of his opposition and reasons therefor but shall, nevertheless, sign the joint proposed prehearing order which shall be deemed to be approved in all respects except those covered in the statement of opposition.

C. The person who has certified the prehearing order should attend the prehearing conference and the adjudicatory hearing. Any counsel or other representative attending the prehearing conference shall be knowledgeable of aspects of the case and possess the necessary authority to commit his client, associate counsel and witnesses to changes, stipulations and hearing dates.

D. At the conclusion of the prehearing conference, the administrative law judge shall sign the order setting the case for the adjudicatory hearing. Thereafter no amendments to the prehearing order shall be made except at the discretion of the administrative law judge based upon consent of the parties or for good cause shown. If a party fails to cooperate in preparing or filing a prehearing order, the administrative law judge may proceed with the prehearing conference, sign the prehearing order as drafted, continue the prehearing conference, continue the hearing, or order such other action as necessary to facilitate the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

**§529. Rehearing, Reopening, Reconsideration**

A. Unless otherwise provided by law, a decision on the merits shall become final as to any party thirty days after mailing of the notice unless a petition for reconsideration, reopening or rehearing is filed with the Division within ten days from date of mailing pursuant to R.S. 49:959.

B. Any requests for reconsideration, reopening or rehearing shall be granted or denied by the administrative law judge who originally decided the case or any judge to whom the matter is subsequently assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

**§531. Termination of Adjudications; Voluntary Withdrawal; Involuntary Waiver; Failure to Appear; Abandonment**

A. The administrative law judge may issue an order terminating an adjudication based upon voluntary waiver, withdrawal of the request for a hearing, rescission by the

agency of the underlying action, settlement, stipulation, consent order, or any other procedure allowed by law.

B. In accordance with R.S. 49:955.A, a party who requests an administrative hearing may be deemed to have waived its right to a hearing if after having been provided with reasonable notice the party fails to appear on the day and time set for hearing. In such instances, the rule to show cause, hearing request, or the party's appeal may be dismissed based on the party's waiver of the right to a hearing. The order of dismissal shall be mailed to the party's last known address.

C. Abandonment

1. Except as otherwise provided by law, an action is abandoned when the parties fail to take any step in its prosecution or defense for a period of three years.

2. This provision shall be operative without formal order. However, on ex parte motion of any party, other interested person or the administrative hearings clerk, supported by affidavit, the administrative law judge shall enter an order of dismissal as of the date of its abandonment.

3. The affidavit shall specify that no step has been taken for a period of three years in the prosecution or defense of the action.

4. The order shall be mailed to all parties, and the parties shall have thirty days from date of mailing to move to set aside dismissal based on a showing of good cause.

5. Any formal discovery as authorized by these Rules and the Administrative Procedure Act and served on all parties, whether or not filed of record, including the taking of a deposition with or without formal notice, shall be deemed to be a step in the prosecution or defense of an action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

**Chapter 7. Mediation**

**§701. Mediation**

A. Any party may request a pre-trial mediation conference.

B. Mediation shall not be conducted over the objection of a party.

C. The administrative law judge to whom the case was originally assigned shall not conduct the mediation. The order setting the matter for mediation shall designate another administrative law judge to act as mediator.

D. Each party, representative or attorney shall negotiate in good faith, and be prepared to obtain the authority necessary to settle and compromise the litigation. The mediator may permit telephone appearances in lieu of a personal appearance for good cause and convenience of the parties.

E. Mediation shall not unduly delay the hearing schedule. The presiding administrative law judge may continue scheduled dates on motion of a party or on his/her own motion.

F. Confidentiality of mediations shall be governed by R.S. 9:4112.

G. Each party or representative should submit information sufficient to explain the gist of the case to the assigned mediator at least one day prior to the conference. The submittals need not be in any certain form and may consist of any documents, exhibits or writings the party wishes the mediator to consider before the conference. The mediator may use all statements, documents, exhibits or other types of information submitted, as he/she deems appropriate to foster settlement unless a party has expressly stated otherwise.

H. The mediator shall not draft settlement agreements. Agreements may be recited on the record before the presiding administrative law judge and later reduced to writing by the parties or their representatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:45 (January 2002).

Ann Wise
Director

0201#024

**RULE**

**Student Financial Assistance Commission**
**Office of Student Financial Assistance**

Scholarship/Grant Programs
(LAC 28:IV.301 and 2103)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended Rules of the Scholarship/Grant programs (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

**Title 28**
**EDUCATION**
**Part IV. Student Financial Assistance**
**Higher Education Scholarship and Grant Programs**
**Chapter 3. Definitions**
**§301. Definitions**

* * *

*Selective Enrollment Program*—an advanced college course of study with competitive admissions based on a student's qualifications including successful completion of required college courses and a minimum college cumulative grade point average. Examples of Selective Enrollment Programs include, but are not limited to, medical technology, nursing (bachelor of science), occupational therapy, physical therapy, and radiation technology.

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 28:45 (January 2002).

**Chapter 21. Miscellaneous Provisions and Exceptions**
**§2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements**

A. - E.9.c. ...

10. Transfer C Selective Enrollment Program

a. Definition. A student/recipient who completed his or her program requirements for transfer to a Selective Enrollment Program.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form including official college transcripts and the semester(s) affected, and

ii. a written statement from the dean of the college or the dean=s designee certifying that the student/recipient has or will complete his or her course requirements for transfer to a Selective Enrollment Program.

c. Maximum Length of Exception. Two semesters or three quarters.

A.11.c. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17: 959 (October 1991), amended LR 22:338 (May 1996), LR 23:1647 (December 1997), LR 24:647 (April 1998), LR 24:1916 (October 1998), LR 26:1015 (May 2000) LR 28:46 (January 2002).

Mark S. Riley
Assistant Executive Director

0201#016

**RULE**

**Office of the Governor**
**Division of Administration**
**Racing Commission**

Licenses Necessary for Entry (LAC 46:XLI.1105)

The Louisiana State Racing Commission has amended the following Rule.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part XLI. Horseracing Occupations**
**Chapter 11. Owners**
**§1105. Licenses Necessary for Entry**

A. Before a horse may be entered, its owner or owners must secure the appropriate licenses from the commission, unless permission is granted by the stewards.

B. The minimum age for an owner's applicant is 16 years old. However, for every applicant under the age of 18 years old, the owner's license application shall be submitted with a notarized affidavit from his or her parent or legal guardian stating that the parent or legal guardian assumes responsibility for the minor licensee's financial, contractual and other obligations relating to the applicant's participation in racing. Further, the applicant's parent or legal guardian must be eligible and present for eligibility for licensing.

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

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:429 (December 1976), repromulgated LR 3:25 (January 1977), LR 4:274 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:46 (January 2002).

Charles A. Gardiner III
Executive Director

0201#014

**RULE**

**Department of Health and Hospitals**
**Office of Public Health**

Emergency Medical Technician Training
Fee Schedule (LAC 48:XI.3501)

The Department of Health and Hospitals, Office of Public Health, in accordance with R.S. 40:1232.1, R.S. 40:5 and the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 48 XI.3501, Fee Schedule as follows.

**Title 48**
**PUBLIC HEALTH C GENERAL**
**Part XI. Hospitals**
**Chapter 35. Emergency Medical Technician Training**
**§3501. Fee Schedule**

A. - B. ...

C. The Bureau of Emergency Medical Services shall set fees for emergency medical personnel under the following conditions.

1. Volunteers. The bureau shall not require or collect any fee or charges for certification or recertification of emergency medical personnel who:

a. serve as such on a voluntary basis; and

b. receive no compensation of any kind for such services.

2. Public Exceptions. The bureau shall not set the fee for certification of an emergency medical technician C basic to exceed $15 for any individual who:

a. is an employee of a municipal law enforcement agency; or

b. fire service; or

c. fire protection district, who does not perform emergency medical services outside of the individual's official governmental responsibilities for any form of compensation.

3. The bureau shall not set the fee for recertification of an emergency medical technician-basic to exceed $10 for any individual who:

a. is an employee of a municipal law enforcement agency; or

b. fire service; or

c. fire protection district, who does not perform emergency medical services outside of the individual's official governmental responsibilities for any form of compensation.

4. The bureau shall assess fees for testing and certification based on the following schedule:

a. test fees:
   i. first responder-written only: $15;
   ii. first responder-written only (out-of-state): $15;
   iii. basic initial written and practical: $60;
   iv. basic entire practical exam: $30;
   v. basic partial practical: $15;
   vi. basic testing/retesting-written only: $15;
   vii. basic testing/retesting-written only (out-of-state): $15;
   viii. intermediate initial written and practical: $75;
   ix. intermediate initial written and practical (out-of-state): $100;
   x. intermediate retest entire practical: $50;
   xi. intermediate retest entire practical (out-of-state): $65;
   xii. intermediate retest partial practical: $30;
   xiii. intermediate retest partial practical (out-of-state): $30;
   xiv. intermediate testing/retesting-written exam only: $15;
   xv. intermediate testing/retesting-written exam only (out-of-state): $15;
   xvi. paramedic initial written and practical: $90;
   xvii. paramedic initial written and practical (out-of-state): $125;
   xviii. paramedic retesting entire practical: $60;
   xix. paramedic retesting entire practical (out-of-state): $75;
   xx. paramedic retesting partial practical: $35;
   xxi. paramedic retesting partial practical (out-of-state): $40;
   xxii. paramedic testing/retesting written: $15;
   xxiii. paramedic testing/retesting written (out-of-state): $15.

b. Certification fees are charged as follows:
   i. first responder initial certification: $10;
   ii. basic emergency medical technician initial certification: $30;
   iii. intermediate initial certification: $40;
   iv. paramedic initial certification: $50;
   v. first responder recertification: $5;
   vi. basic emergency medical technician recertification: $25;
   vii. intermediate recertification: $35;
   viii. paramedic recertification: $45;
   ix. basic EMT reciprocity: $60;
   x. intermediate reciprocity: $80;
   xi. paramedic reciprocity: $100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1232.1 (Act 515 of the 2001 Louisiana Legislature).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Hospitals, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 15:478, 512 (June 1989), LR 28:46 (January 2002).

David W. Hood
Secretary

0201#048

**RULE**

**Department of Health and Hospitals**
**Office of Public Health**

Reportable Disease

Under the authority of R.S. 40:5 and in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health has amended Chapter II of the Louisiana Sanitary Code.

The threat of new or re-emerging infectious diseases/conditions, as well as, the potential for bioterrorist events, necessitates the addition of several diseases/conditions to the list of reportable diseases/conditions and changes in the time periods for reporting specific diseases/conditions (Section 2:003). The revised list of reportable diseases provides for the addition of the following diseases/conditions: Anthrax, Aseptic meningitis, Brucellosis, Cryptococcosis, Cyclosporiasis, Dengue, EHEC serogroup non 0157, EHEC + shiga toxin not serogrouped, Giardia, Hantavirus Pulmonary Syndrome, Hansen Disease (leprosy), Listeria, Plague, Psittacosis, Streptococcal pneumoniae (invasive in children <5 years of age), Tularemia, Smallpox and Viral Hemorrhagic fever. This action has become necessary as a result of the recognition of new and re-emerging diseases of public health importance and/or those that may be associated with bioterrorist events. In addition, three diseases were removed from the reportable list for which reports have been rare or sporadic: Amebiasis, Meningitis, other bacterial, fungal and Mycobacteriosis, atypical. The need to categorize the reportable disease/condition list according to time periods for reporting will allow for more timely and efficient public health responses for which active intervention and prevention can be instituted.

Employee Health requirements for tuberculosis control would no longer apply to day care center employees (Section 2:022, 2:023 and 2:024), as no cases of tuberculosis have occurred among them since the requirement was implemented in 1994.

**Sanitary Code**
**State of Louisiana**
**Chapter II. The Control of Disease**

**2:003** The following diseases or conditions are hereby declared reportable with reporting requirements by Class:

A. Class A Diseases or Conditions Which Shall Require Reporting Within 24 Hours

This class includes diseases of major public health concern because of the severity of disease and potential for epidemic spread. Class A diseases or conditions shall be reported to the Office of Public Health by telephone immediately upon recognition that a case, a suspected case, or a positive laboratory result is known. In addition, all cases of rare or exotic communicable diseases, unexplained death, unusual cluster of disease and all outbreaks shall also be reported.

The following diseases or conditions shall be classified as Class A for reporting requirements:

Anthrax
Botulism
Brucellosis
Cholera
Diphtheria
Haemophilus influenzae (invasive infection)
Measles (rubeola)
Neisseria meningitidis (invasive infection)
Plague
Rabies (animal and man)
Rubella (congenital syndrome)
Rubella (German measles)
Smallpox
Tularemia
Viral Hemorrhagic Fever

B. Class B Diseases or Conditions Which Shall Require Reporting Within 1 Business Day

This class includes diseases of public health concern needing timely response because of potential for epidemic spread. The following Class B diseases shall be reported to the Office of Public Health by the end of the next business day after the existence of a case, a suspected case, or a positive laboratory result is known

Arthropod-borne encephalitis
Aseptic meningitis
Chancroid[1]
E. Coli 0157:H7
Hantavirus Pulmonary Syndrome
Hemolytic-Uremic Syndrome
Hepatitis A (acute illness)
Hepatitis B (carriage in pregnancy)
Herpes (neonatal)
Legionellosis
Malaria
Mumps
Pertussis
Salmonellosis
Shigellosis
Syphilis[1]
Tetanus
Tuberculosis[2]
Typhoid Fever

C. Class C Diseases or Conditions Which Shall Require Reporting Within 5 Business Days

This class shall include the diseases of significant public health concern. The following diseases shall be reported to the Office of Public Health a by the end of the workweek after the existence of a case, suspected case, or a positive laboratory result is known

Acquired Immune Deficiency Syndrome (AIDS)
Blastomycosis
Campylobacteriosis
Chlamydial infection 0
Cryptococcosis
Cryptosporidiosis
Cyclosporiasis
Dengue
EHEC serogroup non 0157
EHEC + shiga toxin not serogrouped
Enterococcus -Vancomycin Resistant; (VRE)
Giardia
Gonorrhea0
Hansen Disease (leprosy)
Hepatitis B (acute)
Hepatitis C (acute)
Human Immunodeficiency Virus (HIV)
Listeria
Lyme Disease
Lymphogranuloma venereum0
Psittacosis
Rocky Mountain Spotted Fever (RMSF)
Staphylococcus aureus, Methicillin/Oxacillin or vancomycin resistant (MRSA)
Streptococcus pneumoniae [invasive infection; penicillin, resistant (DRSP)]
Streptococcus pneumoniae (invasive infection in children <5 years of age)
Varicella (chickenpox)
Vibrio infections (other than cholera)

D. Other Reportable Conditions

Cancer
Complications of abortion
Congenital hypothyroidism*
Galactosemia*
Hemophilia*
Lead Poisoning*
Phenylketonuria*
Reye's Syndrome
Severe traumatic head injury**
Severe undernutrition
(severe anemia, failure to thrive)
Sickle cell disease (newborns)*
Spinal cord injury**
Sudden infant death syndrome (SIDS)

Case reports not requiring special reporting instructions (see below) can be reported by Confidential Disease Case Report forms (2430), facsimile, phone reports, or electronic transmission.

0Report on STD-43 form. Report cases of syphilis with active lesions by telephone.

5Report on CDC72.5 (f.5.2431) card.

*Report to the Louisiana Genetic Diseases Program Office by telephone (504) 568-5070 or FAX (504) 568-7722.

**Report on DDP-3 form; preliminary phone report from ER encouraged (504) 568-2509. Information contained in reports required under this section shall remain confidential in accordance with the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4; R.S. 40:2 and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18:1386, (December 1992), amended LR 20: 1294 (November 1994); LR 28:47 (January 2002).

**2:022** All persons prior to or at the time of employment at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals or any person prior to or at the time of commencing volunteer work

involving direct patient care at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals shall be free of tuberculosis in a communicable state as evidenced by either

(1) a negative purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method;

(2) a normal chest x-ray, if the skin test is positive; or

(3) a statement from a licensed physician certifying that the individual is non-infectious if the x-ray is other than normal. The individual shall not be denied access to work solely on the basis of being infected with tuberculosis, provided the infection is not communicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4; R.S. 40:2 and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18:1386 (December 1992), amended LR 20:1294 (November 1994), LR 28:48 (January 2002).

**2:023** Any employee or volunteer at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals who has a positive purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, or a chest x-ray other than normal, in order to remain employed or continue work as a volunteer, shall complete an adequate course of chemotherapy for tuberculosis as prescribed by a Louisiana licensed physician, or shall present a signed statement from a Louisiana licensed physician stating that chemotherapy is not indicated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4; R.S. 40:2 and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18:1386 (December 1992), amended LR 29:1294 (November 1994), LR 28:49 (January 2002).

**2:024** Any employee or volunteer at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals who has a negative purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, in order to remain employed or to continue to work as a volunteer, shall be re-tested annually as long as the purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, remains negative. Any employee or volunteer converting from a negative to a positive purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, shall be referred to a physician and followed as indicated in Section 2:023.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4; R.S. 40:2 and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18:1386 (December 1992), amended LR 20:1294 (November 1994), LR 28:49 (January 2002).

David W. Hood
Secretary

0201#047

**RULE**

**Department of Health and Hospitals**
**Office of Public Health**

Retail Food Establishments (LAC XXIII.Chapters 1-47)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:5, repeals Chapter XXII, Chapter XXIII, and Chapter XXIII.A and promulgates Part XXIII of the Louisiana State Sanitary Code to be in accordance with current Food and Drug Administration, (FDA), Food Code guidelines and codified in accordance with the Administrative Procedure Act as follows:

**Title 51**
**PUBLIC HEALTHCSANITARY CODE**
**Part XXIII. Retail Food Establishments**

**Chapter 1. Definitions**

**§101. Definitions [formerly paragraph 23:001]**

A. Terms not defined or referenced herein shall have the meanings as defined in LAC 51:I.. In any instance where a term defined herein is also defined in one or more Parts of LAC 51:Part I, the definition contained in this Part shall govern this Part.

"*a*"**C**water activity.

*Additive***C**as defined in Federal Food, Drug and Cosmetic Act 201(s), [21 U.S.C. 321(s)], any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

a. a pesticide chemical residue in or on a raw agricultural commodity, processed food; or

b. a pesticide chemical; or

c. a color additive; or

d. any substance used in accordance with a sanction or approval granted prior to the enactment of this paragraph pursuant to this Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.,); or

e. a new animal drug; or

f. an ingredient described in paragraph (ff) of this Act in, or intended for use in, a dietary supplement;

g. and defined in 21 CFR 170.3(e)(1)**C**Food additives include all substances not exempted by section 201(s) of this Act, the intended use of which results or may

reasonably be expected to result, directly or indirectly, either in their becoming a component of food or otherwise affecting the characteristics of food. A material used in the production of containers and packages is subject to the definition if it may reasonably be expected to become a component, or to affect the characteristics, directly or indirectly, of food packed in the container. "Affecting the characteristics of food" does not include such physical effects, as protecting contents of packages, preserving shape, and preventing moisture loss. If there is no migration of a packaging component from the package to the food, it does not become a component of the food and thus is not a food additive. A substance that does not become a component of food, but that is used, for example, in preparing an ingredient of the food to give a different flavor, texture, or other characteristic in the food, may be a food additive.

*Adulterated Food***C**as defined in §607 of the State Food, Drug, and Cosmetic Law (R.S. 40:601 et seq.), a food is considered adulterated if it has been found to be such by any department of the United States government, or:

a. if it contains any poisonous or deleterious substances, added or otherwise, which may render it dangerous to health, or any added poisonous or deleterious substance which is prohibited by R.S. 40:611 or which is in excess of the limits of tolerance prescribed by regulations of the department;

b. if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;

c. if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;

d. if it is the product of a diseased animal or of an animal which has died otherwise than by slaughter;

e. if its container is composed of any poisonous or deleterious substance which may render the contents injurious to health;

f. if any valuable constituent has been in whole or in part abstracted therefrom;

g. if any substance has been substituted wholly or in part therefore;

h. if damage or inferiority has been concealed in any manner;

i. any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, reduce its quality or strength, or create a deceptive appearance;

j. if it contains a coal-tar color other than one from a batch that has been certified in accordance with regulations of the department;

k. if it is confectionery or ice cream and contains any alcohol, resinous glaze, or non-nutritive substance except harmless coloring, harmless flavoring, natural gum, and pectin. However, this Paragraph does not apply to any confectionery or ice cream by reason of its containing less that one-half of one percent by volume of alcohol, derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substance.

*Approved Supplier***C**a producer, manufacturer, distributor or food establishment that is acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, with current public health principles and practices, and generally recognized industry standards that protect public health.

*Base of Operations/Commissary***C**a catering establishment, restaurant, or any other properly equipped place in which food, containers, or supplies are kept, handled, prepared, packaged or stored.

*Bed and Breakfast Establishment***C**a privately owned house where rooms are let and a breakfast is included in the rent. See Food Establishment.

*Beverage***C**a liquid for drinking, including water.

*Bulk Food***C**processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn.

*CIP***C**clean in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

*Certification Number***C**a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

*Comminuted***C**reduced in size by methods including chopping, flaking, grinding, or mincing and restructured or reformulated.

*Consumer***C**a "person" who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a "food" establishment or "food processing plant" and does not offer the "food" for resale.

*Convenience Store***C**a retail food store which is usually easily accessible and deals mostly with prepackaged food products.

*Corrosion-Resistant Material***C**a material that maintains acceptable surface cleanability characteristics under prolonged influence of the "food" to be contacted, the normal use of cleaning compounds, and "sanitizing" solutions, and other conditions of the environment.

*Critical Control Point***C**as defined in the 1999 Food Code published by FDA, a point or procedure in a specific "food" system where loss of control may result in an unacceptable health risk.

*Critical Item***C**a provision of this code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation, such as, but not limited to a potentially hazardous food stored at improper temperature, poor personal hygienic practices, not sanitizing equipment and utensils, no water, contaminated water sources, sewage backup, severe insect and rodent infestation, and chemical contamination.

*Deli/Delicatessen***C**a food establishment which generally serves ready to eat food products such as sandwiches, cold cuts, cheeses, prepared salads and some prepared hot foods.

*Drinking Water***C**see potable water.

*Dry Storage Area***C**a room or area designated for the storage of "packaged" or containerized bulk "food" that is not Apotentially hazardous@ and dry goods such as "single-service" items.

*Easily Cleanable***C**surfaces that are readily accessible and made of such materials, finish and so fabricated that residue may be effectively removed by normal cleaning methods.

*Employee***C**the permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

*Equipment***C**an article that is used in the operation of a food establishment and retail food store/market such as, but not limited to, a reach-in or walk-in refrigerator or freezer, grinder, ice maker, meat block, mixer, oven, scale, sink, slicer, stove, table, thermometers, vending machine, or warewashing machine.

*Fairs and Festivals***C**a gathering of persons for an event such as a bazaar, carnival, circus, public exhibition or other similar gathering for the purpose of celebration, competition, entertainment, distribution or sale of foods or goods, exhibition, religious activity, or other such purposes, which will operate for only a temporary period in any one location.

*Food***C**a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

*Foodborne Disease Outbreak***C**the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

*Food Contact Surfaces***C**a surface of equipment or a utensil with which food normally comes in contact with, or a surface of equipment or a utensil from which food may drain, drip or splash into a food or onto a surface normally in contact with food.

*Food Establishment***C**an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption. The term includes restaurants, cafeterias, caterers, delicatessens, bars, lounges, or any other facility that prepares food for individual service or for a group of people, whether consumption is on or off the premises and regardless if there is a charge for the food. The term does not include:

a. private homes where food is prepared or served for individual family consumption and a kitchen in a private home if only "food" that is not "potentially hazardous" is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by "law" and if the "consumer" is informed by a clearly visible placard at the sales or service location that the "food" is prepared in a kitchen that is not subject to regulation and inspection by the "regulatory authority;"

b. a kitchen in a private home, such as a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the Office of Public Health.

*Food Vendor/Food Concessionaire***C**any person who handles food or drink during preparation or serving, or who comes in contact with any eating or drinking utensils, or who is employed at any time in a room in which food or drink is prepared or served in a temporary food service.

*Game Animals***C**an animal, the products of which are food, that is not classified by law as cattle, sheep, swine, goat, poultry, fish, and game birds or small animals as described in Chapter X of the Louisiana State Sanitary Code.

*Garbage***C**the putrescible components of refuse which are subject to spoilage, rot, or decomposition. It includes wastes from the preparation and consumption of food, vegetable matter, and animal offal and carcasses.

*HAACP***C**Hazard Analysis Critical Control Point.

*HACCP Plan***C**a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee of Microbiological Criteria for Foods.

*Hermetically Sealed Container***C**a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

*Highly Susceptible Population***C**a group of "persons" who are more likely than other populations to experience foodborne disease because they are immunocompromised, or for the purposes of this Part, older adults in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

*Hot Holding Temperature***C**food stored for hot holding and service shall be held at a temperature of 140EF (60EC) or higher with the exception of roast beef. If roast beef is cooked in accordance with §1305.A.7 the minimum hot holding temperature shall be 130EF (54EC).

*Individual Food Operator/Responsible Person***C**the person responsible for operating the individual temporary food service.

*Injected***C**manipulating a meat through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping."

*Itinerant Food Establishment***C**any fixed or mobile food establishment which operates on a temporary or seasonal basis.

*Itinerant Retail Food Store/Market***C**any fixed or mobile retail food store/market which operates on a temporary or seasonal basis.

*Kiosk***C**a small structure used as a food and/or beverage booth.

*Kitchenware***C**food preparation and storage utensils.

*Label***C**the principal display or displays of written, printed, or graphic matter upon any food or the immediate container thereof, or upon the outside container or wrapper, if any, of the retail package of any food.

*Labeling***C**includes all labels and other written, printed and graphic matter, in any form whatsoever, accompanying any food.

*Linens***C** fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

*Market***C**a retail food store or food market which stores, prepares, packages, serves, vends or otherwise provides food

products such as beverages, eggs, meat, milk, produce, seafood or other similar products.

*Microorganisms***C** yeasts, molds, fungi, bacteria, parasites and viruses including, but not limited to, species having public health significance. The term "undesirable microorganisms" includes those microorganisms that are of public health significance, that subject food to decomposition, that indicate that food is contaminated with filth, or that otherwise may cause food to be adulterated within the meaning of the Food, Drug and Cosmetic Laws and Regulations.

*Mobile Food Establishment***C** a vehicle-mounted food establishment designed to be readily movable.

*Mobile Retail Food Store/Market***C** a vehicle-mounted retail food store/market designed to be readily movable.

*Multi-Service Articles***C** reusable articles for the service of foods made of smooth, impervious material and approved by the State Health Officer.

*Noncritical Item***C** all provisions in this Part that are not classified as critical items.

*Offal***C** waste parts, especially of a butchered animal, including but not limited to bones, cartilage, fatty tissue and gristle.

*Open Air Market***C** a site that deals in produce that is normally peeled or washed prior to consumption, honey, jellies and syrups.

*Organizer/Promoter/Chairman***C** that person responsible for managing a festival or fair. In the event of his/her unavailability, the assistant shall be deemed the responsible person.

"*pH*"**C** the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 alkalinity. The value for pure distilled water is 7, which is considered neutral.

*PPM***C** parts per million, (mg/l) which is the metric equivalent.

*Packaged***C** bottled, canned, cartoned, securely bagged, or securely wrapped.

*Permit***C** the document issued by the "Department" that authorizes a "person" to operate a "food establishment" or "retail food store/market."

*Permit Holder***C** the entity that:

a. is legally responsible for the operation of the establishment such as the owner, the owner's agent, or other "person"; and

b. possesses a valid "permit" to operate an establishment.

*Person***C** an association, a corporation, individual, partnership, other legal entity, governmental subdivision or agency.

*Person in Charge***C** the individual present at a food establishment or retail food store/market who is responsible for the operation at the time of inspection.

*Personal Care Items***C**

a. items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a "person's" health, hygiene, or appearance;

b. includes items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

*Pest***C** refers to any objectionable animal or insect including, but not limited to, birds, roaches, rodents, flies, and larvae.

*Poisonous or Toxic Materials***C** substances that are not intended for ingestion including, but not limited to:

a. cleaners and "sanitizers" which include cleaning and "sanitizing" agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

b. pesticides, except "sanitizers," which include substances such as insecticides, rodenticides, herbicides;

c. substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and "personal care items" that may be deleterious to health.

*Potable Water***C** water having bacteriological, physical, radiological and chemical qualities that make it safe and suitable for use by people for drinking, cooking or washing.

*Potentially Hazardous Food***C**

a. food that is natural or synthetic and is in a form capable of supporting:

i. the rapid and progressive multiplication of infectious or toxigenic microorganisms;

ii. the multiplication and toxin production of *Clostridium botulinum*; or

iii. in shell eggs, the multiplication of *Salmonella enteritidis*.

b. *potentially hazardous food* includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures.

c. potentially hazardous food does not include:

i. an air-cooled hard-boiled-egg with shell intact;

ii. a food with a water activity ($a_w$) value of 0.85 or less;

iii. a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 75EF (24EC);

iv. a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

v. a food for which a variance granted by the regulatory authority is based upon laboratory evidence demonstrating that rapid and progressive multiplication of infectious and toxigenic microorganisms or the slower multiplication of *C. botulinum* cannot occur.

*Premises***C**

a. the physical facility, its contents, and the contiguous land or property under the control of the "permit holder"; or

b. the physical facility, its contents, and the land or property not described under Subparagraph a of this definition if its facilities and contents are under the control of the "permit holder" and may impact establishment personnel, facilities, or operations, and an establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

*Pushcart***C** a mobile food establishment or retail food store/market propelled by a person.

*Ready-to-Eat-Food***C** food that is in a form that is edible without washing, cooking, or additional preparation by the

food establishment or the consumer and that is reasonably expected to be consumed in that form.

*Recognized Louisiana Festival or Fair***C**those fairs or festivals that are officially acknowledged, in writing, as recognized by a state, parish, or municipal governmental body or by the Louisiana Association of Fairs and Festivals.

*Reconstituted***C**dehydrated food products recombined with water or other liquids.

*Reduced Oxygen Packaging***C**the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21 percent oxygen. This may include methods referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including sous vide.

*Refuse***C**any garbage, rubbish, sludge from a food establishment, retail food store/market, waste treatment plant, water supply treatment plant, or air pollution control facility. It also includes other discarded material such as solid, liquid, semi-solid, or contained gaseous material resulting from either industrial, commercial, mining, or agricultural operations, or from community activities. It does not include solid or dissolved material in domestic sewage, irrigation return flow, industrial discharges which are point sources, or radioactive wastes.

*Regulatory Authority***C**the local, state or federal enforcement body or authorized representative having jurisdiction over the food establishment or retail food store/market.

*Retail Food Manufacturer***C**an establishment in which food is manufactured or packaged for human consumption and is sold only at the site of manufacture, such as but not limited to bakery products and candy.

*Retail Food Store/Market***C**all types of food markets including convenience, fixed, mobile and temporary food stores. These may also be referred to as groceries. Larger retail food stores may also include bakeries and delicatessens.

*Rubbish***C**all non-putrescible waste matter, except ashes, from any public or private establishments, institution, or residence. It also includes construction and demolition wastes.

*Safe Material***C**an article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any "food."

*Sanitization***C**the application of cumulative heat or chemicals on cleaned "food-contact surfaces" that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999-percent reduction of representative disease microorganisms of public health importance.

*Seafood***C**includes but is not limited to fish, shellfish, edible crustaceans, marine and freshwater animal food products.

*Sealed***C**free of cracks or other openings that allow the entry or passage of moisture.

*Seasonal***C**a recurrent period that is characterized by certain seasons of the year, occupations, festivities, or crops; any period of time that is legally available to the hunter, fisherman, or trapper. These seasons are legally set by government regulatory agencies such as the State Department of Wildlife and Fisheries, State Department of Agriculture or other such agencies.

*Single-Service Articles***C**tableware, carry-out utensils, and other items such as bags, containers, cups, lids, closures, plates, knives, forks, spoons, paddles, napkins, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use and then discarded.

*Single-Use Articles***C**utensils and bulk food containers designed and constructed to be used once and discarded. "Single-use articles" includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs, or buckets, bread wrappers, pickle barrels, and number 10 cans.

*Slacking***C**the process of moderating the temperature of a "food" such as allowing a "food" to gradually increase from a temperature of -23EC (-10EF) to -4EC (25EF) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen "food" such as spinach.

*Smoked Food***C**food which has been colored or flavored by natural or liquid smoke.

*Substantial Renovation***C**

a. alterations or repairs made within a 12-month period, costing in excess of 50 percent of the then physical value of the existing building; or

b. alterations or repairs made within a 12-month period, costing in excess of $15,000; or

c. alterations or repairs made within a 12-month period, involving a change in "occupancy classification" or use of the property;

d. the physical value of the building in Subparagraph a of this Paragraph may be established by an appraisal not more than three years old, provided that said appraisal was performed by a certified appraiser or by the tax assessor in the parish where the building is located;

e. the cost of alterations or repairs in Subparagraphs a or b of this Paragraph may be established by:

i. an estimate signed by a licensed architect or a licensed general contractor, or

ii. by copies of receipts for the actual costs.

*Tableware***C**eating, drinking, and serving utensils for table use such as flatware including forks, knives and spoons; hollowware including bowls, cups, serving dishes, tumblers; and plates.

*Temperature Measuring Device***C**a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

*Temporary Food Establishment***C** a fixed or mobile food establishment that operates for a period of time of not more than 21 consecutive days in conjunction with a single event in a single location such as, but not limited to a festival or fair.

*Temporary Retail Food Store/Market***C**a fixed or mobile food store/market which operates for a period of time no more than 21 consecutive days in conjunction with a single event in a single location such as, but not limited to a festival or fair.

*Temporary Food Service***C**a "temporary food establishment" or "temporary retail food store/market."

*Utensil***C**a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multi-use, single-service, or single-use; gloves used in contact with food; and food temperature measuring devices.

*Warewashing***C**the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

*Water Activity***C**($a_w$) a measure of the free moisture in a food and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

*Wholesome***C**food which is in sound condition, clean, free from adulteration or contamination and is otherwise suitable for human consumption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:49 (January 2002).

## Chapter 3. General Requirements

### §301. Effective Date of Title

A. The provisions of this Title shall have effect from the date of publication hereof as a rule in the *Louisiana Register*. Upgrading of such buildings and facilities shall be required when:

1. the construction of buildings and facilities was not previously approved by the state health officer pursuant to sanitary code requirements then in effect;

2. substantial renovation of, or additions to, such buildings or facilities is undertaken;

3. the real property ownership, or the occupancy classification of the business located therein changes subsequent to the effective date hereof;

4. the business ownership (occupant) changes subsequent to the effective date, except that the upgrading of restroom plumbing fixtures shall not be required where only the business ownership (occupant) changes if the construction of restroom plumbing fixtures was approved by the state health officer pursuant to sanitary code requirements then in effect; or

5. a serious health threat to the public health exists, unless otherwise specifically provided hereinafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:54 (January 2002).

### §303. Interpretation [formerly paragraph 23:002]

A. This Part shall be interpreted and applied to promote its underlying purpose of protecting the public health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:54 (January 2002).

### §305. Food Safety Certification [formerly paragraph 23:002-2]

A. The owner or a designated employee of each food establishment shall hold a "food safety certificate" from the department exclusively on behalf of that food establishment. The certificate shall be required to be renewed every five years.

B. Any food establishments with food sales of less than $125,000 annually shall not be required to comply with this Section until July 1, 2002. However, any establishment may apply for such certificate prior to such date. Those food establishments permitted after July 1, 2002 shall comply with this Section within 60 days of permit issuance.

C. To obtain a department food safety certificate, the following is required.

1. The individual must complete a course provided by an approved training program. The department shall approve all training programs and shall maintain a list of these training programs. These programs shall include, but are not limited to, the standards set forth in the ServSafe Program established by the Educational Foundation of the National Restaurant Association, or other programs recognized by the food service industry and the department.

a. Instructors/trainers shall meet the criteria established by the Educational Foundation of the National Restaurant Association or other instructor/trainer requirements established by the food service industry and the department.

b. The department shall approve training programs administered or approved by another state, political subdivision, or other jurisdiction with standards that meet or exceed those established in this code.

2. The individual must pass a written exam approved by the department before qualifying for the certificate. This test will meet the standards as described in Paragraph 1 above.

3. The individual must submit a completed application to the department with:

a. satisfactory evidence that he/she has completed an approved training program which includes passing a written examination; and

b. a $25 fee for each certificate.

4. Upon receipt and approval of the documentation and fee described in Paragraph 3 above, the department shall then issue a food safety certificate to the applicant.

5. The permit holder shall display a current state food safety certificate in a location in the food establishment conspicuous to the public.

D. Certificates from the department shall be required to be renewed every five years for a $25 fee. A person shall pass another written exam as described in Paragraph 2, Subsection C above before the certificate is renewed.

E. No parish or municipality in Louisiana shall enforce any ordinance or regulation requiring a food establishment or any of its employees to complete a Food Safety training program or test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and 40:5.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:54 (January 2002).

### §307. Submission of Plans [formerly paragraph 23:003]

A. Whenever a food establishment or retail food store/market is constructed, substantially renovated, or a change of real property or business ownership occurs, or the occupancy classification changes, plans and specifications shall be submitted to the state health officer for review and

approval. The plans and specifications must be approved before construction and renovation begins and shall indicate the proposed type of operation, anticipated volume and types of food products to be stored, prepared, packaged and/or served along with the proposed layout of the facility, mechanical plans, construction materials and the types and location and specifications of all fixed and mobile equipment to be used in the establishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:54 (January 2002).

**§309. Preoperational Inspection [formerly paragraph 23:004]**

A. The state health officer may conduct one or more preoperational inspections to verify that the food establishment or retail food store/market is constructed and equipped in accordance with the approved plans and is in compliance with all provisions of this Title.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:55 (January 2002).

**§311. Hazard Analysis Critical Control Point (HACCP) [formerly paragraph 22:02-4]**

A. A food establishment or retail food store/market that packages food using a reduced oxygen packaging method shall have a Hazard Analysis Critical Control Point (HACCP) plan and provide the information required in §4121.

B. A HACCP plan shall contain:

1. a catagorization of the types of Potentially Hazardous Foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department.

2. a flow diagram by specific food or category type identifying Critical Control Points and providing information on the following;

a. ingredients, materials, and equipment used in the preparation of that food; and

b. formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

3. a supervisory training plan that addresses the food safety issues of concern;

4. a statement of standard operating procedures for the plan under consideration including clearly identifying;

a. each critical control point;

b. the critical limits for each critical control point;

c. the method and frequency for monitoring and controlling each critical control point by the employee designated by the person in charge;

d. the method and frequency for the person in charge to routinely verify that the employee is following standard operating procedures and monitoring critical control points;

e. action to be taken by the person in charge if the critical limits for each critical control point are not met;

f. records to be maintained by the person in charge to demonstrate that the HAACP plan is properly operated and managed; and

5. additional scientific data or other information, as required by the department supporting the determination that food safety is not compromised by the proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:55 (January 2002).

## Chapter 5. Permits

**§501. General [formerly paragraph 23:125]**

A. No person shall operate a food establishment or retail food store/market of any type without first having received a valid permit to operate from the state health officer. Permits are not transferable. A valid permit shall be posted in a location of the establishment conspicuous to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:55 (January 2002).

**§503. To Obtain a Permit from the State Health Officer: [formerly paragraph 23:126-1, 23:126-2, 23:126-3]**

A. The owner, president of the corporation, or other such officer duly delegated by the corporation or partnership shall make written application for a permit to operate and submit plans as described in §307 to the state health officer.

B. After plans and specifications have been reviewed and approved, the owner, president of the corporation, or other such officer shall request a preoperational inspection be made as described in §309 to determine compliance with all provisions of this Title.

C. A permit to operate shall be issued by the state health officer to the applicant if an inspection reveals that the proposed food establishment or retail food store/market and applicant has complied with all the provisions of this Title.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:55 (January 2002).

## Chapter 7. Employee Health

**§701. General [formerly paragraph 23:031]**

A. All employees shall meet the requirements of Part I, §117.A, B of this title, Employee Health and Chapter 2, The Control of Diseases, of the State Sanitary Code. The employee shall report information to the person in charge about their health and activities as they relate to infectious diseases that are transmissible through food. The person in charge shall be responsible for complying with Part I, §117 of this title, and excluding the employee from the food establishment to prevent the likelihood of foodborne disease transmission.

B. All employees shall report to the person in charge any symptom caused by illness, infection, or other source that is:

1. associated with an acute gastrointestinal illness such as diarrhea, fever, vomiting, jaundice or sore throat with fever; or

2. a lesion containing pus such as a boil or infected wound that is open or draining and is:

a. on the hands or wrist, unless an impermeable cover such as a finger cot, or stall protects the lesion and a single-use glove is worn over the impermeable cover;

b. on exposed portions of the arms, unless the lesion is protected by an impermeable cover; or

c. on other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage.

C. The person in charge shall restrict employees from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment or retail food store/market if the employee is suffering a symptom specified in Subsection B of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:55 (January 2002).

## Chapter 9. Personal Cleanliness and Hygienic Practices

### §901. Handwashing [formerly paragraph 23:032]

A. Employees shall thoroughly wash their hands and exposed portions of their arms with soap and warm water before starting work, before applying gloves, during work as often as necessary to keep them clean, and after smoking, using tobacco, eating, drinking, coughing, sneezing, handling raw food, using the toilet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:56 (January 2002).

### §903. Fingernails [formerly paragraph 22:06-2]

A. Employees shall keep their fingernails clean and trimmed not to exceed the end of the fingertip. An employee shall not wear nail polish or artificial fingernails when working with exposed food.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:56 (January 2002).

### §905. Jewelry [formerly paragraph 22:06-3]

A. Employees may not wear jewelry on their arms and hands while preparing food. This does not apply to a plain ring such as a wedding band.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:56 (January 2002).

### §907. Outer Clothing [formerly paragraph 22:06-4]

A. Employees shall wear clean outer clothing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:56 (January 2002).

### §909. Hand Sanitizers

A. Employees may apply hand sanitizers only to hands that are cleaned as specified in §901of this Chapter. Hand sanitizers shall comply with all state and federal regulations and be used in accordance with label directions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:56 (January 2002).

### §911. Eating and Drinking [formerly paragraph 23:034-1]

A. Employees shall eat and drink only in designated areas where the contamination of exposed food, equipment, utensils or other items needing protection cannot result. An employee may drink while preparing food from a closed beverage container if the container is handled properly to prevent contamination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:56 (January 2002).

### §913. Using Tobacco [formerly paragraph 23:034-2]

A. Employees shall not use tobacco in any form while preparing or serving food. Employees shall use tobacco only in designated areas such as described in §4105.C of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:56 (January 2002).

### §915. Hair Restraints [formerly paragraph 23:033-2]

A. Employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food, equipment, utensils and other items needing protection. This does not apply to employees such as counter staff who only serve beverages and wrapped or packaged food items if they present a minimal risk of contaminating exposed food, clean equipment, utensils, and linens, and unwrapped single service and single use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:56 (January 2002).

### §917. Food Contamination [formerly paragraph 22:07-4]

A. Employees experiencing persistent sneezing, coughing or a runny nose may not work with exposed food, equipment, utensils or other items needing protection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:56 (January 2002).

**§919. Handling**
**[formerly paragraph 22:07-5]**

A. Employees shall handle soiled tableware in a manner to prevent the contamination of clean tableware by their hands. Employees may not care for or handle animals allowed under §4101.B of this Part while preparing or serving food, except employees may handle or care for fish in aquariums, or molluscan shellfish, or crustacea in display tanks or storage when they wash their hands as specified under §901of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:57 (January 2002).

## Chapter 11. Food Supplies

**§1101. General**
**[formerly paragraph 22:08-1]**

A. All food shall be safe, unadulterated and honestly presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:57 (January 2002).

**§1103. Source**
**[formerly paragraph 22:08-2]**

A. Food shall be obtained from sources that comply with law. Food prepared in a private home may not be used or offered for human consumption in any food establishment or retail food store/market. This section shall not apply to any jellies, preserves, jams, honey and honeycomb products prepared in private homes, when the gross annual sales are less than $5000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and 40:4.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:57 (January 2002).

**§1105. Package**
**[formerly paragraph 22:08-3]**

A. Food packages shall be in a good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:57 (January 2002).

**§1107. Labeling**
**[formerly paragraph 22:08-4]**

A. Packaged food shall be labeled as specified by law. All bulk food storage containers shall be properly labeled according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:57 (January 2002).

**§1109. Raw Shellfish Consumer Information Message**
**[formerly paragraph 22:08-5.1]**

A. All establishments that sell or serve raw oysters must display signs, menu notices, table tents, or other clearly visible messages at point of sale with the following wording: "THERE MAY BE A RISK ASSOCIATED WITH CONSUMING RAW SHELLFISH AS IS THE CASE WITH OTHER RAW PROTEIN PRODUCTS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH OR BLOOD OR HAVE OTHER IMMUNE DISORDERS, YOU SHOULD EAT THESE PRODUCTS FULLY COOKED." In addition, this message must appear on the principal display panel or top of containers of pre-packaged raw oysters. This may be done by printing on the container or by pressure sensitive labels. In addition, the following message must appear on the tag of each sack or other container of unshucked raw oysters: "THERE MAY BE A RISK ASSOCIATED WITH CONSUMING RAW SHELLFISH AS IS THE CASE WITH OTHER RAW PROTEIN PRODUCTS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH OR BLOOD OR HAVE OTHER IMMUNE DISORDERS, YOU SHOULD EAT THESE PRODUCTS FULLY COOKED."

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:57 (January 2002).

**§1111. Exemption to Raw Shellfish Consumer Information Message**
**[formerly paragraph 22:08-5.2]**

A. Food establishments that exclusively serve raw molluscan shellfish that have been subjected to a process recognized by the state health officer as being effective in reducing the bacteria *Vibrio vulnificus* to non-detectable levels may apply for an exemption from the mandatory consumer information notification requirement. Food establishments interested in obtaining an exemption shall certify in writing to the state health officer that it shall use exclusively for raw consumption only molluscan shellfish that have been subjected to the approved process. Upon receipt and verification of that communication, the state health officer may confirm the establishment as being exempt from the requirement of displaying the consumer information message. The food establishment's certification must be sent to the state health officer at the following address:

Louisiana Office of Public Health
P.O. Box 629
Baton Rouge, LA 70821-0629

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:57 (January 2002).

**§1113. Hermetically Sealed Containers**
**[formerly paragraph 22:08-6]**

A. Food in hermetically sealed containers shall be obtained from a licensed and/or regulated food processing plant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:57 (January 2002).

**§1115. Milk**
**[formerly paragraph 22:08-7]**

A. Fluid, frozen, dry milk and milk products shall be obtained from sources with Grade A Standards as specified in law and Chapter VII and Chapter VIII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:57 (January 2002).

**§1117. Seafood**

**[formerly paragraph 22:08-8]**

A. Fish, shellfish, edible crustaceans, marine and fresh water animal food products shall be obtained from sources according to law and Chapter IX of the State Sanitary Code. Shellstock tags shall be retained by the food establishment or retail food store/market for 90 days after service or sale to the consumer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:58 (January 2002).

**§1119. Eggs**

**[formerly paragraph 22:08-9]**

A. Shell eggs shall be received clean and sound according to law.

B. Liquid, frozen and dry egg products shall be obtained pasteurized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:58 (January 2002).

**§1121. Poultry and Meats**

**[formerly paragraph 22:08-10]**

A. Poultry and meat products shall be obtained from sources according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:58 (January 2002).

**§1123. Game Animals**

**[formerly paragraph 22:08-11]**

A. Game animals may be received for sale if they are under a routine inspection program conducted by a regulatory authority or raised, slaughtered, and processed under a voluntary inspection program by a regulatory authority.

B. If retail food markets are requested by an individual to process wild deer meat, they must process this meat in accordance with the guidelines established by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:58 (January 2002).

## Chapter 13. Temperature

**§1301. Temperature Control**

**[formerly paragraph 22:09-1]**

A. Except as specified in §1303 of this Chapter, all refrigerated potentially hazardous foods shall be received at a temperature of 41EF (5EC) or below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:58 (January 2002).

**§1303. Exceptions**

**[formerly paragraph 22:09-2]**

A. Shell eggs, milk and molluscan shellstock may be received at a temperature not to exceed 45EF (7.2EC) as specified by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:58 (January 2002).

**§1305. Cooking/Reheating**

**[formerly paragraph 22:09-3]**

A. Foods shall be cooked to heat all parts of the food to a temperature and for a time that are at least:

1. 165EF (74EC) or above for 15 seconds for wild game, poultry, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites or stuffing containing fish, meat or poultry;

2. 155EF (68EC) or above for 15 seconds for comminuted fish, comminuted meats, injected meats, ratites or raw pooled eggs;

3. 165EF (74EC) or above when foods are cooked or reheated in microwave ovens and the food shall be rotated and stirred throughout to compensate for uneven distribution of heat;

4. 145EF (63EC) or above for 15 seconds for pork and all other foods;

5. 165EF (74EC) or above for 15 seconds in all parts of the food when reheating all potentially hazardous food that is cooked, cooled, and reheated for hot holding or serving;

6. 130EF (54EC) minimum internal temperature for beef roasts or to a temperature and time that will cook all parts of the roast as required by the following;

a. in an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature; and

| Oven Type | Oven Temperature Based on Roast Weight | |
|---|---|---|
| | Less than 4.5 kg (10 lbs.) | 4.5 kg (10 lbs.) or more |
| Still Dry | 350EF (177EC) or more | 250EF (121EC) or more |
| Convection | 325EF (163EC) or more | 250EF (121EC) or more |
| High Humidity[1] | 250EF (121EC) or less | 250EF (121EC) or less |

[1]Relative humidity greater than 90 percent for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100 percent humidity.

b. as specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature;

| Temperatu re | Time in Minutes | Temperature | Time in Minutes | Temperature | Time in Minutes |
|---|---|---|---|---|---|
| 130EF (54EC) | 121 | 136EF (58EC) | 32 | 142EF (61EC) | 8 |
| 132EF (56EC) | 77 | 138EF (59EC) | 19 | 144EF (62EC) | 5 |
| 134EF (57EC) | 47 | 140EF (60EC) | 12 | 145EF (63EC) | 3 |
| Holding time may include post -oven heat rise. | | | | | |

7. 140EF (60EC) or above for 15 seconds for raw vegetables and fruit.

B. Exceptions:

1. raw or undercooked whole muscle, intact beef steak to be served or offered for sale in a ready to eat form shall be cooked to 145EF (63EC) or above surface temperature on both the top and bottom and until a cooked color change is achieved on all external surfaces; and

2. all food shall be served in accordance with this Section unless otherwise ordered by the consumer for immediate service, such as but not limited to raw, marinated fish, raw molluscan shellfish, steak tartare, or partially or lightly cooked food, if the food establishment serves a population that is not a highly susceptible population.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:58 (January 2002).

**§1307. Hot Holding Temperatures**
**[formerly paragraph 22:09-4]**

A. Food stored for hot holding and service shall be held at a temperature of 140EF (60EC) or higher with the exception of roast beef. If roast beef is cooked in accordance with §1305.A.6 of this Chapter the minimum hot holding temperature shall be 130EF (54EC).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:59 (January 2002).

**§1309. Cold Holding Temperatures**
**[formerly paragraph 22:09-5]**

A. Food stored for cold holding and service shall be held at a temperature of 41EF (5EC) or below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:59 (January 2002).

**§1311. Cooling**
**[formerly paragraph 22:09-6]**

A. Cooling of food shall be accomplished by using one or more of the following methods:

1. placing the food in shallow pans;
2. separating the food into smaller or thinner portions;
3. using rapid cooling equipment;
4. stirring the food in a container placed in an ice water bath;
5. using containers that facilitate heat transfer;
6. adding ice as an ingredient;
7. other approved effective methods.

B. Cooked potentially hazardous food shall be cooled:

1. to 70EF (21EC) from 140EF (60EC) within two hours of cooking or hot holding; and

2. to 41EF (5EC) from 70 EF (21EC) within four hours or less.

C. Potentially hazardous food, if prepared from ingredients at ambient temperature, shall be cooled to 41EF (5EC) within four hours following preparation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:59 (January 2002).

**§1313. Frozen Food**
**[formerly paragraph 22:09-7]**

A. Stored frozen food should be stored at a temperature of 0EF (-17.8EC) or below and shall be maintained frozen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:59 (January 2002).

**§1315. Thawing**
**[formerly paragraph 22:09-8]**

A. Potentially hazardous food shall be thawed by one of the following methods:

1. under refrigeration that maintains the food temperature at 41EF (5EC) or below;

2. completely submerged under potable running water at a temperature of 70EF (21EC) or below with sufficient water velocity to agitate and float off loose particles in an overflow;

3. for a period of time that does not allow thawed portions to rise above 41EF (5EC);

4. as part of the conventional cooking process or thawed in a microwave oven and immediately transferred to conventional cooking equipment with no interruption in the cooking process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:59 (January 2002).

**§1317. Time as a Public Health Control**
**[formerly paragraph 22:09-9]**

A. Time only, rather than time in conjunction with temperature, may be used as a public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption if:

1. the food is marked or otherwise identified with the time within which it shall be cooked, served or discarded;

2. the food is served or discarded within four hours from the point in time when the food is removed from temperature control;

3. food in unmarked containers or packages, or for which the time expires, is discarded; and

4. written procedures are maintained in the food establishment or retail food store/market and are available to the department upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:59 (January 2002).

**§1319. Parasite Destruction by Freezing**

A. Except as specified in Subsection B of this Section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

1. -4EF (-20EC) or below for 168 hours (7 days) in a freezer; or

2. -31EF (-35EC) or below for 15 hours in a blast freezer.

B. If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under Subsection A of this Section.

C. Except as specified in Subsection B of this Section, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment or retail food store/market for 90 calendar days beyond the time of service or sale of the fish.

D. If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under §1319 may substitute for the records specified under Subsection C of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:60 (January 2002).

**§1321. Temperature Measuring Devices (Thermometers) [formerly paragraph 22:09-10]**

A. Temperature measuring devices shall be provided and used to measure:

1. food temperatures of potentially hazardous food on a device scaled in Fahrenheit (F) accurate to a plus or minus 2EF or Celsius (C) accurate to a plus or minus 1EC and should be able to measure the internal temperature of food products that are less than 1/2 inch thick,

2. ambient air temperature of all equipment used to hold potentially hazardous food on a device scaled in Fahrenheit accurate to a plus or minus 3EF or Celsius accurate to a plus or minus 1.5EC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:60 (January 2002).

## Chapter 15. Food Storage

**§1501. Protected [formerly paragraph 22:10-1]**

A. Food shall be protected from contamination by storing the food:

1. in a clean, dry location;

2. where it is not exposed to splash, dust, or other contamination;

3. at least six inches (15 cm) above the floor except:

i. metal pressurized beverage containers and cased food packages in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture.

ii. containerized food may be stored on dollies, racks or pallets, provided such equipment is readily movable.

4. so that it is arranged so that cross contamination of raw animal foods of one type with another, or ready to eat foods is prevented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:60 (January 2002).

**§1503. Storage [formerly paragraph 22:10-2]**

A. Food may not be stored:

1. in locker rooms;

2. in toilet rooms;

3. in dressing rooms;

4. in garbage rooms;

5. in mechanical rooms;

6. under sewer pipes;

7. under water pipes that are not adequately shielded to intercept potential drips;

8. under open stairwells;

9. in vehicles used to transfer or hold any type of waste; or

10. under other sources of contamination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:60 (January 2002).

**§1505. Packaged Food [formerly paragraph 22:10-3]**

A. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water through the packaging, wrapping, or container because of its positioning in the ice or water. Unpackaged food may only be stored in direct contact with drained ice; except

1. whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water;

2. raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service or sale.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:60 (January 2002).

**§1507. Date Marking**

A. Ready-to-eat, potentially hazardous foods prepared on premise and held under refrigeration for more than 24 hours shall be clearly marked at the time of preparation to indicate the date by which the food shall be consumed, which is, including the day of preparation, seven calendar days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:60 (January 2002).

## Chapter 17. Food Preparation

### §1701. General [formerly paragraph 22:11-1]

A. During preparation, unpackaged food shall be protected from environmental sources of contamination. Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served or offered for human consumption in ready to eat form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:61 (January 2002).

### §1703. Hand Contact [formerly paragraph 23:012]

A. Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized prior to use to prevent cross-contamination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:61 (January 2002).

### §1705. Cross Contamination [formerly paragraph 22:11-3]

A. Cross contamination shall be prevented by separating:

1. raw animal foods from ready to eat foods, including but not limited to, placing, storing, or displaying ready to eat food above raw animal food;

2. raw unprepared vegetables from ready to eat potentially hazardous foods; or

3. certain raw animal foods from each other because of different cooking temperatures except when combining as ingredients.

B. Cross contamination shall be prevented by properly washing, rinsing and sanitizing cutting boards, food preparation surfaces and other food contact surfaces following contact with raw animal foods or raw vegetables and before contact with ready to eat food.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:61 (January 2002).

### §1707. Reconstituted Dry Milk and Dry Milk Products [formerly paragraph 23:015]

A. Reconstituted dry milk and dry milk products meeting the requirement of Chapter VII of the State Sanitary Code may only be used in instant desserts and whipped products, or for cooking and baking purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:61 (January 2002).

### §1709. Molluscan Shellfish [formerly paragraph 22:11-2]

A. Raw shellfish shall be handled in accordance with Chapter IX of the State Sanitary Code, except a HACCP plan is not required and raw shellfish may not be prepackaged by food establishments and retail food stores/markets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:61 (January 2002).

## Chapter 19. Food Display and Service

### §1901. General [formerly paragraph 22:12-1]

A. Food on display shall be protected from contamination by the use of packaging, counter service line or food/sneeze guards, display cases, or other effective means except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption.

B. Proper utensils shall be used for preparation, service and dispensing of food. These utensils shall be stored in accordance with §2519 of this Part.

C. Self service consumers shall not be allowed to use soiled tableware, including single service articles, to obtain additional food from the display and serving equipment. Tableware, including single service articles, shall be made available at the serving display. A sign shall be posted at the serving display prohibiting the reuse of soiled tableware.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:61 (January 2002).

### §1903. Bulk Foods [formerly paragraph 22:12-2]

A. Bulk foods shall be handled and dispensed in a manner described in §1901.of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:61 (January 2002).

### §1905. Condiments [formerly paragraph 22:12-3]

A. Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:61 (January 2002).

### §1907. Ice [formerly paragraph 22:12-4]

A. Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice-self-dispensing utensils or through automatic service ice-dispensing equipment. Ice-dispensing utensils shall be stored in accordance with §2519.of this Part.

B. Ice used as a medium for cooling food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, shall not be used as food.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:61 (January 2002).

**§1909. Reservice**
**[formerly paragraph 22:12-5]**

A. Once served to a consumer, portions of left-over food shall not be reserved, except:

1. food that is not potentially hazardous, such as crackers and condiments, in an unopened original package and maintained in sound condition may be reserved or resold;

2. food that is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:62 (January 2002).

**§1911. Special Requirements for Highly Susceptible Populations**

A. In a food establishment that serves a highly susceptible population:

1. prepackaged juice or a prepackaged beverage containing juice must be pasteurized;

2. pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs shall be substituted for raw shell eggs in the preparation of:

a. foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, egg nog, ice cream, and egg-fortified beverages, and

b. recipes in which more than one egg is broken and the eggs are combined except:

i. when combined immediately before cooking for one consumer's serving at a single meal, cooked to 145EF for 15 seconds and served immediately, such as an omelet, souffle, or scrambled eggs;

ii. when combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread.

3. Food in an unopened original package may not be re-served.

4. The following foods may not be served or offered for sale in a ready to eat form:

a. raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;

b. a partially cooked animal food such as lightly cooked fish, rare meat, soft cooked eggs that are made from raw shell eggs, and meringue; and

c. raw seed sprouts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:62 (January 2002).

## Chapter 21. Equipment and Utensils

**§2101. General**
**[formerly paragraph 22:13]**

A. All equipment and utensils shall be of construction approved by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:62 (January 2002).

**§2103. Multi-Use**
**[formerly paragraph 22:13-1]**

A. Materials that are used in the construction of utensils and food contact surfaces of equipment shall not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

1. safe;

2. durable, corrosion-resistant, and non absorbent;

3. sufficient in weight and thickness to withstand repeated warewashing;

4. finished to have a smooth, easily cleanable surface; and

5. resistant to pitting, chipping, grazing, scratching, scoring, distortion, and decomposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:62 (January 2002).

**§2105. Copper**
**[formerly paragraph 22:13-2]**

A. Copper and copper alloys such as brass shall not be used in contact with a food that has a pH below 6.0, such as vinegar, fruit juice, or wine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:62 (January 2002).

**§2107. Galvanized Metal**
**[formerly paragraph 22:13-3]**

A. Galvanized metal shall not be used for utensils or food-contact surfaces or equipment that are used for acidic food.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:62 (January 2002).

**§2109. Lead**
**[formerly paragraph 22:13-4]:**

A. Lead in Ceramic, China, and Crystal Utensils**C**Use Limitation

1. Ceramic, china, crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

| Utensil Category | Description | Maximum Lead mg/L |
|---|---|---|
| Hot Beverage Mugs | Coffee Mugs | 0.5 |
| Large Hollowware | Bowls $ 1.1L (1.16 qt) | 1 |
| Small Hollowware | Bowls < 1.1L (1.16 qt) | 2.0 |
| Flat Utensils | Plates, Saucers | 3.0 |

B. Lead in Pewter Alloys**C**Use Limitation

1. Pewter alloys containing lead in excess of 0.05 percent shall not be used as a "food-contact surface."

C. Lead in Solder and Flux**C**Use Limitation.

1. Solder and flux containing lead in excess of 0.2 percent shall not be used as a food-contact surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:62 (January 2002).

**§2111. Wood**
**[formerly paragraph 22:13-5]**

A. Wood and wood wicker shall not be used as a food-contact surface except as follows.

1. Hard maple or an equivalently hard, close-grained wood may be used for:

a. cutting boards, cutting blocks, baker's tables; and utensils, such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

b. wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 230EF (110EC) or above.

2. Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

3. If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in untreated wood containers or approved treated wood containers complying with the Code of Federal Regulations (CFR).

4. "Cedar-Plank" or "Shingles" may be used as a single-service article if;

a. the food establishment has certified that the "cedar-plank" has not been chemically treated and is in its natural state;

b. the side of the "plank" which will come in contact with the fish must be planed and sanded to a smooth finish.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:63 (January 2002).

**§2113. Non-Food Contact Surfaces**
**[formerly paragraph 22:14]**

A. Surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, non absorbent, and smooth material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:63 (January 2002).

**§2115. Single-Service and Single-Use Articles**
**[formerly paragraph 22:15]**

A. Single-service and single-use articles shall not be reused.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:63 (January 2002).

**§2117. Gloves, Use Limitations**
**[formerly paragraph 22:16]**

A. If used, single use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

B. Except as specified in Subsection C of this Section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under §1305 of this Part such as frozen food or a primal cut of meat.

C. Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove or a single-use glove.

D. Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under §1305 of this Part such as frozen food or a primal cut of meat.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:63 (January 2002).

**§2119. Food Temperature Measuring Devices**
**[formerly paragraph 22:17]**

A. Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:63 (January 2002).

## Chapter 23. Requirements for Equipment

**§2301. General**
**[formerly paragraph 22:18-1]**

A. Equipment used for cooling, heating and holding cold and hot foods, shall be sufficient in number and capacity to provide food temperatures as specified in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:63 (January 2002).

**§2303. Manual Warewashing, Sink Compartment Requirements [formerly paragraph 22:18-2]**

A. A sink with at least three compartments shall be provided for manual washing, rinsing and sanitizing equipment and utensils, except:

1. where an approved alternative process is used as specified in Subsection C of this Section; or

2. where there are no utensils or equipment to wash, rinse and sanitize as in a facility with only prepackaged foods.

B. Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils.

C. When equipment or utensils are too large for the warewashing sink or warewashing machine, the following alternative process may include:

1. high-pressure detergent sprayers;

2. low or line-pressure spray detergent foamers;

3. other task specific cleansing equipment, such as CIP;

4. brushes or other implements.

D. Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing. Drainboards for sinks and machines shall be self-draining.

E. A warewashing sink may not be used for handwashing or dumping mop water. Sinks may be used to wash wiping cloths, wash produce and other foods or thaw foods if the sinks are properly washed and sanitized before this use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:64 (January 2002).

**§2305. Warewashing Machines [formerly paragraph 22:18-3]**

A. When provided, a warewashing machine shall have an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

1. temperatures required for washing, rinsing and sanitizing;

2. pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and

3. conveyor speed for conveyor machines or cycle time for stationary rack machines.

B. Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

C. Warewashing machines shall be equipped with a temperature measuring device that indicates the temperature of the water:

1. in each wash and rinse tank; and

2. as the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

D. Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine.

E. Warewashing machines shall be operated in accordance with the machine's data plate and other manufacturer's specifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:64 (January 2002).

## Chapter 25. Cleaning of Equipment and Utensils

**§2501. General [formerly paragraph 22:19-1]**

A. Equipment food-contact surfaces and utensils shall be clean to sight and touch.

B. The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other accumulations.

C. Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:64 (January 2002).

**§2503. Frequency of Cleaning [formerly paragraph 22:19-2]**

A. Equipment food contact surfaces and utensils shall be cleaned:

1. before each use with a different type of raw animal food such as beef, seafood, lamb, pork, or poultry;

2. each time there is a change from working with raw foods to working with ready to eat foods;

3. between uses with raw fruits or vegetables and with potentially hazardous food;

4. before using or storing a temperature measuring device;

5. at any time during the operation when contamination may have occurred.

B. Equipment food-contact surfaces and utensils used with potentially hazardous food shall be cleaned throughout the day at least every four hours.

C. Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

E. Warewashing equipment, including machines and the compartments of sinks, basins or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards, shall be cleaned:

1. before use;

2. throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and

3. if used, at least every 24 hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:64 (January 2002).

**§2505. Cleaning Agents**
**[formerly paragraph 22:19-3]**

A. The wash compartment of a sink, mechanical warewasher, or other alternative process as specified in §2303.C of this Part, when used for warewashing, shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleanser, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer=s label instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:65 (January 2002).

**§2507. Temperature of Wash Solution**
**[formerly paragraph 22:19-4]**

A. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 110EF (43EC) unless a different temperature is specified on the cleaning agent manufacturer's label instruction.

B. The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

1. for a single tank, stationary rack, single temperature machine, 165EF (74EC);

2. for a single tank, conveyor, dual temperature machine, 160EF (71EC);

3. for a single tank, stationary rack, dual temperature machine, 150EF (66EC);

4. for a multitank, conveyor, multitemperature machine, 150EF (66EC).

C. The temperature of the wash solution in spray type warewashers that use chemicals to sanitize may not be less that 120EF (49EC).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:65 (January 2002).

**§2509. Methods of Cleaning**
**[formerly paragraph 22:19-5]**

A. Precleaning

1. Food debris on equipment and utensils shall be scrapped over a waste disposal unit, scupper, or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

2. If necessary for effective cleaning, utensils and equipment shall be pre-flushed, pre-soaked, or scrubbed with abrasives.

B. Loading. Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

1. exposes the items to the unobstructed spray from all cycles and;

2. allows the items to drain.

C. Wet Cleaning

1. Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

2. The washing procedures selected shall be based on the type and purpose of equipment or utensil, and on the type of soil to be removed.

3. Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:65 (January 2002).

**§2511. Rinsing Procedures**
**[formerly paragraph 22:19-6]**

A. Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or other solutions. A distinct, separate water rinse after washing and before sanitizing shall be used with:

1. a three compartment sink;

2. an alternative manual warewashing equipment equivalent to a three compartment sink as specified in §2303.C of this Part;

3. a three-step washing, rinsing and sanitizing procedure in a warewashing system for CIP equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:65 (January 2002).

**§2513. Sanitization**
**[formerly paragraph 22:19-7]**

A. After the food-contact surfaces of all equipment and utensils are washed and rinsed, they shall be sanitized before use. Clean food-contact surfaces of all equipment and utensils shall be sanitized in:

1. hot water:

a. if immersion in hot water is used in manual operation, the temperature of the water shall be maintained at 171EF (77EC) or above;

b. in a mechanical operation, the temperature of the hot water rinse as it enters the manifold may not be more than 194EF (90EC) or less than:

i. for a single tank, stationary rack, single temperature machine, 165EF (74EC); or

ii. for all other machines, 180EF (82EC). This should achieve a utensil surface temperature of 160EF (71EC) as measured by an irreversible registering temperature indicator;

c. in a mechanical operation using a hot water rinse, the flow pressure may not be less than 15 pounds per square inch or more than 25 pounds per square inch as measured in the water line immediately upstream from the fresh hot water sanitizing rinse control valve;

2. chemicals:

a. only a chemical sanitizer listed in 21 CFR 178.1010, Sanitizing Solutions, shall be used in a sanitizing solution for manual or mechanical operation at the specified exposure times. These sanitizing solutions shall be used in accordance with the EPA approved manufacturers label use instructions, and shall be used as follows.

i. A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

| Minimum Concentration | Minimum Temperature | Minimum Temperature |
|---|---|---|
| MG/L or ppm | >pH 8 - pH 10 | pH 8 or less |
| 25 ppm | 120EF (49EC) | 120EF (49EC) |
| 50 ppm | 100EF (38EC) | 75EF (24EC) |
| 100 p.p.m | 55EF (13EC) | 55EF (13EC) |

ii. An iodine solution shall have a:

(a). minimum temperature of 75EF (24EC);

(b). pH of 5.0 or less, unless the manufacturer's use directions included in the labeling specify a higher pH limit of effectiveness; and

(c). concentration between 12.5 mg/L and 25 mg/L(ppm).

iii. A quarternary ammonium compound solution shall:

(a). have a minimum temperature of 75EF (24EC);

(b). have a concentration of 200 mg/L (ppm) or as indicated by the manufacturer's use directions included in labeling; and

(c). be used only in water with 500 mg/L (ppm) hardness or less.

iv. Other solutions of the chemicals specified in (i), (ii), and (iii), of this Subparagraph may be used if demonstrated to the department to achieve sanitization and approved by the department; or

v. other chemical sanitizers may be used if they are applied in accordance with the manufacturer's use directions included in the labeling.

b. Chemical, manual or mechanical operations, including the applications of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified in §2513.A.2.a of this section shall be used to provide the following:

i. an exposure time of at least 10 seconds for a chlorine solution;

ii. an exposure time of at least 30 seconds for other chemical sanitizer solutions, or

iii. an exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in this Part.

c. A test kit or other device that accurately measures the concentration in mg/L or parts per million (ppm) of sanitizing solution shall be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:65 (January 2002).

**§2515. Air Drying**
**[formerly paragraph 22:19-8]**

A. Except as specified in Subsection C of this Section, after cleaning and sanitizing, equipment and utensils may not be cloth-dried.

B. Equipment and utensils shall be air-dried or used after adequate draining as specified in paragraph (a) of 21 CFR 178.1010 Sanitizing Solutions, before contact with food.

C. Utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:66 (January 2002).

**§2517. Storage of Clean Equipment and Utensils**
**[formerly paragraph 22:19-9]**

A. Except as specified in Subsection D of this Section, cleaned equipment, utensils and single-service and single use articles shall be stored:

1. in a clean dry location;

2. where they are not exposed to splash, dust, or contamination; and

3. at least 6 inches (15 cm) above the floor.

B. Clean equipment and utensils shall be stored as specified under Subsection A of this Section and shall be stored:

1. in a self-draining position that permits air drying; and

2. covered or inverted.

C. Single-service and single-use articles shall be stored as specified under Subsection A of this Section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

D. Items that are kept in closed packages may be stored less than 6 inches (15 cm) above the floor on dollies, pallets, racks, or skids provided that the storage equipment is designed so that it may be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:66 (January 2002).

**§2519. In Use and Between Use Utensil Storage**
**[formerly paragraph 22:19-10]**

A. During pauses in food preparation or dispensing, food preparation dispensing utensils shall be stored:

1. in the food;

a. with their handles above the top of the food and the container;

b. with their handles above the top of the food within containers or equipment that can be closed, if such food is not potentially hazardous , such as bins of sugar, flour, or cinnamon;

2. on a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under §2503 of this Part;

3. in running water of sufficient velocity to flush particulate matter to the drain, if used with moist food such as ice cream or mashed potatoes; or

4. in a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous;

5. in a container of water if the water is maintained at a temperature of at least 140EF (60EC) and the container is

cleaned at least once every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:66 (January 2002).

## Chapter 27. Water Supply

### §2701. General

**[formerly paragraph 22:20-1]**

A. Sufficient quantities of potable water for the needs of the food establishment or retail food store/market shall be provided in accordance with Chapter XII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:67 (January 2002).

### §2703. Pressure

**[formerly paragraph 22:20-2]**

A. Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:67 (January 2002).

### §2705. Hot Water

**[formerly paragraph 22:20-3]**

A. Hot water shall be provided to all fixtures, equipment and nonfood equipment as required and the generation and distribution system shall be sufficient to meet the peak hot water demands throughout the food establishment or retail food store/market.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:67 (January 2002).

### §2707. Steam

**[formerly paragraph 22:20-4]**

A. Steam used in contact with food or food contact surfaces shall be free of deleterious materials or additives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:67 (January 2002).

### §2709. Bottled Water

**[formerly paragraph 22:20-5]**

A. Bottled and packaged potable water shall be obtained from a source that complies with Chapter VI of the State Sanitary Code and the Food, Drug and Cosmetic Law and Regulations. Bottled and packaged potable water, if used, shall be handled and stored in a way that protects it from contamination and shall be dispensed from the original container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:67 (January 2002).

## Chapter 29. Sewage

### §2901. General

**[formerly paragraph 22:21-1]**

A. All sewage from retail food establishments or retail food stores/markets shall be disposed of through an approved sewerage system/facility in accordance with Chapter XIII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:67 (January 2002).

## Chapter 31. Plumbing

### §3101. General

**[formerly paragraph 22:22-1]**

A. Plumbing shall be sized, installed, and maintained in accordance with Chapter XIV of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:67 (January 2002).

### §3103. Cross-Connection

**[formerly paragraph 22:22-2]**

A. There shall be no cross-connection between the potable water supply and any other source of water of lesser quality including any source of pollution from which the potable water supply might become contaminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:67 (January 2002).

### §3105. Backflow

**[formerly paragraph 22:22-3]**

A. Backflow shall be prevented by:

1. installing an air gap in the water distribution system between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment which is at least twice the diameter of the water supply inlet (or generally, three times the diameter if affected by a nearby wall); or

2. installing an approved backflow or backsiphonage prevention device installed and maintained on a water line in accordance with Chapter XIV of the State Sanitary Code;

3. not having a direct connection between the drainage system and any drain line originating from equipment in which food, portable equipment, or utensils are placed (e.g., any sink where food is cleaned, peeled, cut up, rinsed, battered, defrosted, or otherwise prepared or handled; potato peelers; ice cream dipper wells, refrigerators; freezers; walk-in coolers and freezers; ice boxes; ice making machines; fountain type drink dispensers; rinse sinks; cooling or refrigerating coils; laundry washers; extractors; steam tables; steam kettles; egg boilers; coffee urns; or similar equipment).

> Exception: A commercial dishwashing (warewashing) machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 5 feet (1.5 m) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:67 (January 2002).

**§3107. Non-Potable Water System**
**[formerly paragraph 22:22-4]**

A. A non-potable water system is permitted only for purposes such as air conditioning and fire protection, provided the system is installed in accordance with Chapter XII and Chapter XIV of the State Sanitary Code and:

1. the non potable water does not contact directly or indirectly, food, potable water equipment that contacts food, or utensils; and

2. the piping of any nonpotable water system shall be easily identified so that it is readily distinguishable from piping that carries potable water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:68 (January 2002).

**§3109. Lavatory Facilities**
**[formerly paragraph 22:22-5]**

A. All lavatory fixtures shall be installed in accordance with Chapter XIV of the State Sanitary Code and:

1. at least one handwashing lavatory shall;

a. be located to permit convenient use by all employees in food preparation areas and utensil washing areas including the produce, meat and seafood markets;

b. also be located in or immediately adjacent to toilet rooms;

2. lavatories shall be accessible to employees at all times;

3. lavatories shall be equipped to provide a flow of water at a temperature of at least 85EF (30EC) through a mixing valve or combination faucet;

4. if a self-closing, slow-closing, or metering faucet is used, it shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet;

5. steam mixing valves are prohibited;

6. a supply of hand-cleansing soap or detergents shall be available at each lavatory. A supply of individual disposable towels, a continuous towel system that supplies the user with a clean towel or a heat-air drying device shall be available at each lavatory. The use of common towels is prohibited;

7. lavatories, soap dispensers, hand-drying devices and all related fixtures shall be kept clean and in good repair;

8. a handwashing lavatory may not be used for purposes other than handwashing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:68 (January 2002).

**§3111. Toilet Facilities**
**[formerly paragraph 22:22-6]**

A. All toilet fixtures and facilities shall be installed in accordance with Chapter XIV of the State Sanitary Code and:

1. toilet fixtures and facilities shall be the number required, shall be conveniently located, and accessible to employees at all times;

2. a toilet room located on the premises shall be completely enclosed and provided with a solid tight-fitting and self-closing door except that this requirement does not apply to a toilet room that is located outside a food establishment or retail food store/market and does not open directly into the food establishment or retail food store/market, such as but not limited to shopping malls, airports, or other places of public assembly;

3. toilet rooms shall be mechanically vented to the outside atmosphere;

4. toilet fixtures and facilities shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials with at least one covered waste receptacle in toilet rooms used by women.

B. Toilet rooms shall be provided with a properly installed floor drain. The floor shall slope towards the floor drain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:68 (January 2002).

**§3113. Grease Traps**
**[formerly paragraph 22:22-7]**

A. An approved type grease trap shall be installed in accordance with Chapter XIV of the State Sanitary Code and:

1. it shall be installed in the waste line leading from the sinks, drains and other fixtures or equipment where grease may be introduced in the drainage or sewage system in quantities that may affect line stoppage or hinder sewage treatment;

2. a grease trap, if used, shall be located to be easily accessible for cleaning and shall be serviced as often as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:68 (January 2002).

**§3115. Garbage Grinders**
**[formerly paragraph 22:22-8]**

A. If used, garbage grinders shall be installed and maintained in accordance with Chapter XIV of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:68 (January 2002).

**§3117. Utility or Service Sink**
**[formerly paragraph 22:22-9]**

A. At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste. The sink shall be located in an area to avoid food contamination.

B. The use of lavatories, utensil washing, equipment washing, or food preparation sinks as a utility or service sink is prohibited.

C. In some special applications, because of space restrictions or unique situations, when the risk of contamination is low in the opinion of the state health officer, a large utility/service sink may be used as a handwashing sink.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:68 (January 2002).

## Chapter 33. Garbage, Rubbish and Refuse

### §3301. General

**[formerly paragraph 22:23-1]**

A. All garbage, rubbish and refuse shall be handled in accordance with Chapter XXVII of the State Sanitary Code .

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:69 (January 2002).

### §3303. Receptacles for Garbage, Rubbish and Refuse

**[formerly paragraph 22:223-2]**

A. Equipment and receptacles for refuse, recyclables, returnables, and for use with materials containing food residue shall be durable, cleanable, insect and rodent resistant, leakproof, and nonabsorbent.

B. Plastic bags and wet strength paper bags may be used to line receptacles for storage of garbage, etc., inside the retail food establishment or retail food store/market, or within closed outside receptacles.

C. Outside receptacles for garbage, etc., shall have tight-fitting lids, doors, or covers and shall be kept closed.

D. There shall be a sufficient number of receptacles to hold all the garbage and refuse that accumulates. They shall be emptied when full. All garbage, rubbish and refuse shall be disposed of in an approved manner pursuant to applicable state laws and regulations.

E. Soiled receptacles shall be cleaned at a frequency to prevent a nuisance or the attraction of insects and rodents.

F. Liquid waste from compacting shall be disposed of as sewage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:69 (January 2002).

### §3305. Incineration

**[formerly paragraph 22:23-3]**

A. Where garbage, rubbish or refuse is burned on the premises, it shall be done by incineration in accordance with the rules and regulations of the Louisiana Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:69 (January 2002).

### §3307. Cleaning and Storage

**[formerly paragraph 22:23-4]**

A. Indoor garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent washable materials, shall be kept clean, shall be insect and rodent proof and shall be large enough to store the garbage and refuse that accumulates.

B. Outdoor garbage or refuse storage area surfaces shall be constructed of non-absorbent material such as concrete or asphalt and shall be smooth, durable, and sloped for drainage.

C. Suitable cleaning equipment and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of equipment and receptacles.

D. Liquid waste from the cleaning operation shall be disposed of as sewage. Methods used for this disposal shall prevent rainwater and runoff from entering the sanitary sewerage system. Dumpster pads may be elevated or curbed, enclosed or covered, and the sanitary sewerage drain protected with a proper cover.

E. If approved by the state health officer, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

F. Outdoor premises used for storage of garbage, rubbish, refuse, recyclables and returnables shall be maintained clean and free of litter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:69 (January 2002).

## Chapter 35. Insects and Rodent Control

### §3501. General

**[formerly paragraph 22:24-1]**

A. Insects and rodents shall be controlled in accordance with Chapter V of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:69 (January 2002).

### §3503. Insect Control Devices

**[formerly paragraph 22:24-2]**

A. Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

B. Insect control devices shall be installed so that:

1. the devices are not located over a food preparation area, and

2. dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:69 (January 2002).

### §3505. Openings

**[formerly paragraph 22:24-3]**

A. Openings to a portion of the building that is not part of the food establishment, or retail food store/market, or to the outdoors shall be protected against the entry of insects and rodents by:

1. filling or closing holes and other gaps along floors, walls and ceilings;

2. closed, tight-fitting windows;

3. solid, self-closing, tight-fitting doors; or

4. if windows or doors are kept open for ventilation or other purposes, the openings shall be protected against the entry of insects by:

a. 16 mesh to the inch (25.4 mm) screens;

b. properly designed and installed air curtains; or

c. other effective means approved by the department.

B. Establishment location, weather or other limiting conditions may be considered as part of an overall flying insect and other pest control program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:69 (January 2002).

**§3507. Premises**
**[formerly paragraph 22:24-2]**

A. The premises shall be free of:

1. items that are unnecessary to the operation or maintenance of the food establishment, or retail food store/market, such as equipment that is nonfunctional or no longer used; and

2. litter.

B. The premises shall be kept free of pests by:

1. routinely inspecting the premises for evidence of pests; and

2. using methods of control approved by law.

C. Outdoor walking and driving areas shall be surfaced with concrete, asphalt, gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, drain properly and prevent muddy conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:70 (January 2002).

## Chapter 37. Physical Facilities

**§3701. Floors**
**[formerly paragraph 22:25]**

A. Floors shall be constructed of smooth, durable, nonabsorbant and easily cleanable material.

B. Closely woven and easily cleanable carpet may be used in certain areas of the food establishment or retail food store/market except where food is prepared and processed.

C. Properly installed floor drains shall be provided in toilet rooms, seafood and meat markets and in all areas where water flush cleaning methods are used. The floor shall be sloped to the floor drain.

D. Floors shall be maintained clean and in good repair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:70 (January 2002).

**§3703. Walls and Ceilings**
**[formerly paragraph 22:26]**

A. Walls and ceilings in the food preparation areas and equipment-utensil washing areas shall be constructed of light colored, smooth, durable and easily cleanable materials.

B. Utility service lines, pipes, exposed studs, joists, rafters and decorative items shall not be unnecessarily exposed in food preparation and processing areas. When exposed in other areas of the food establishment or retail food store/market, they shall be installed so they do not obstruct or prevent cleaning of the walls and ceilings.

C. Walls, ceilings, and any attachments shall be maintained clean and in good repair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:70 (January 2002).

**§3705. Lighting Intensity**
**[formerly paragraph 22:27-1]**

A. The lighting intensity:

1. in walk-in refrigeration units and dry food storage areas, and in other areas or rooms during periods of cleaning, shall be at least 110 lux (10 foot candles) at a distance of 30 inches (75 cm) above the floor.

2. in areas where there is consumer self service, areas used for handwashing, warewashing, equipment and utensil storage, and in toilet rooms, shall be at least 220 lux (20 foot candles) at a distance of 30 inches (75 cm) above the floor.

3. at a surface where a food employee is working with unpackaged potentially hazardous food or with food, utensils, and equipment such as knives, slicers, grinders, or saws where employees' safety is a factor, shall be at least 540 lux (50 foot candles) at a distance of 30 inches (75 cm) above the floor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:70 (January 2002).

**§3707. Light Shielding**
**[formerly paragraph 22:27-2]**

A. Light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food, clean equipment, utensils and linens or unwrapped single-service and single-use articles.

B. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:70 (January 2002).

**§3709. Mechanical Ventilation**
**[formerly paragraph 22:28-1]**

A. If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes, mechanical ventilation of sufficient capacity shall be provided exhausting to the outside atmosphere.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:70 (January 2002).

**§3711. Hood Ventilation [formerly paragraph 22:28-2]**

A. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings and should be equipped with filters to prevent grease from escaping into the outside atmosphere.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:70 (January 2002).

**§3713. Heating, Air Conditioning, Ventilating System Vents [formerly paragraph 22:28-3]**

A. These systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food preparation surfaces, equipment and utensils.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:71 (January 2002).

## Chapter 39. Poisonous or Toxic Materials

**§3901. Labeling [formerly paragraph 22:29-1]**

A. Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

B. Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material. This practice is not allowed in a day-care or residential facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:71 (January 2002).

**§3903. Storage and Display [formerly paragraph 22:29-2]**

A. Poisonous or toxic materials shall be stored for use in food establishments or displayed for retail sale or use in retail food stores/markets so they may not contaminate food, equipment, utensils, linens, single-service and single-use articles by:

1. separating the poisonous or toxic materials by spacing or partitioning; and

2. locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, single-service and single-use articles; and

3. storing those properly labeled medicines and first aid supplies necessary for the health of employees or for retail sale in a location or area that prevents contamination of food, equipment, utensils, linens, single-service and single-use articles; and

4. storing medicines belonging to employees that require refrigeration (and are stored in a food refrigerator) in a package or container kept inside a covered, leakproof container that is identified as a container for the storage of medicines, or as specified for day care centers and residential facilities in Chapter XXI of this Title; and

5. storing employees' personal care items in lockers or other suitable facilities that are located in an area that prevents contamination of food, equipment, utensils, linens, single-service and single-use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:71 (January 2002).

**§3905. Use [formerly paragraph 22:29-3]**

A. Only those poisonous or toxic materials that are required for the operation and maintenance of the food establishment or retail food store/market such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in food preparation and processing areas. This does not apply to approved, packaged poisonous or toxic materials that are for retail sale stored in accordance with §3903 of this Part.

B. Poisonous or toxic materials shall be stored in accordance with §3903 of this Part, and used according to:

1. law;

2. manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions including a statement that the use is allowed in a food preparation or processing area; and

3. any additional conditions that may be established by the regulatory authority.

C. Chemical sanitizers and other chemical antimicrobials applied to food contact surfaces shall meet the requirements specified in §2513.A.2 and §2515.B of this Part.

D. Chemicals used to wash or peel raw, whole fruits and vegetables shall be used in accordance with the manufacturer's label instructions and as specified in 21 CFR 173.315.

E. Restricted use pesticides shall be applied and used according to law and in accord with the manufacturer's label instructions.

F. Rodent bait shall be contained in a covered, tamper-resistant bait station.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:71 (January 2002).

## Chapter 41. Miscellaneous

**§4101. Prohibitive Acts [formerly paragraph 22:30]**

A. Except as specified in Subsection B of this Section, live animals may not be allowed on the premises of food establishments or retail food stores/markets.

B. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result; such as

1. edible fish or decorative fish in aquariums, shellfish and crustacea in display tank systems;

2. patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

3. service animals that are controlled by a disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal, in areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas;

4. pets in the common dining areas of group residences at times other than during meals if:

a. effective partitioning and self-closing doors separate the common dining areas from storage or food preparation areas;

b. condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

c. dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.

C. Body Art. No employee or any other person shall engage in the practice of "Body art" within the premises of any food establishment or retail food store/market as defined in this Part.

D. Persons unnecessary to the food establishment or retail food store/market operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:71 (January 2002).

**§4103. Distressed Merchandise [formerly paragraph 22:32]**

A. Products that are held by the food establishment or retail food store/market for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:72 (January 2002).

**§4105. Dressing Areas, Lockers and Employee Break Areas [formerly paragraph 22:33]**

A. Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

B. Lockers or other suitable facilities shall be provided and used for the orderly storage of employees' clothing and other possessions.

C. Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination. Areas where employees use tobacco should be well ventilated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:72 (January 2002).

**§4107. Linen/Laundry, General [formerly paragraph 22:35-1]**

A. Clean linens shall be free from food residues and other soiled matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:72 (January 2002).

**§4109. Linen/Laundry, Frequency of Cleaning [formerly paragraph 22:35-2]**

A. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

B. Cloth gloves shall be laundered before being used with a different type of raw animal food such as beef, lamb, pork, and fish.

C. Wet wiping cloths shall be laundered before being used with a fresh solution of cleanser or sanitizer.

D. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:72 (January 2002).

**§4111. Wiping Cloths [formerly paragraph 22:35-3]**

A. Cloths that are used for wiping food spills shall be used for no other purpose.

B. Moist cloths used for wiping food spills on food contact surfaces of equipment shall be stored in an approved chemical sanitizing solution between uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:72 (January 2002).

**§4113. Storage of Soiled Linens [formerly paragraph 22:35-4]**

A. Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils and single-service and single-use articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:72 (January 2002).

**§4115. Use of Laundry Facilities [formerly paragraph 22:35-5]**

A. Laundry facilities on the premises of a food establishment or retail food store/market shall be used only for the washing and drying of items used in the operation of the establishment and located away from food preparation areas.

B. Linens which are not laundered on the premises may be sent to an off premise commercial laundry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:72 (January 2002).

**§4117. Living Areas [formerly paragraph 22:36]**

A. Living or sleeping quarters such as a private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters, shall not be used for conducting food establishment or retail food store/market operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:72 (January 2002).

**§4119. Maintenance Equipment [formerly paragraph 22:37]**

A. Maintenance tools such as brooms, mops, vacuum cleaners, and similar equipment shall be:

1. stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

2. stored in an orderly manner that facilitates cleaning.

B. Mops should be hung and/or stored in a manner to facilitate air drying.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:73 (January 2002).

**§4121. Reduced Oxygen Packaging Criteria [formerly paragraph 22:39]**

A. A food establishment or retail food store/market that packages food using a reduced oxygen packaging method shall have a Hazard Analysis Critical Control Point (HACCP) plan as specified in §311 of this Part, which provides the following information:

1. identifies the food to be packaged;

2. limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

a. has a water activity of ($a_w$) of 0.91 or less;

b. has a pH of 4.6 or less;

c. is a meat product cured at a food processing plant regulated by the USDA or the Louisiana Department of Agriculture using substances specified in 9 CFR 318.7, Approval of Substances for Use in the Preparation of Products, and 9 CFR 381.147, Restrictions on the Use of Substances in Poultry Products, and is received in an intact package; or

d. is a food with a high level of competing organisms such as raw meat or raw poultry;

3. specifies methods for maintaining food at 41EF (5EC) or below;

4. describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

a. maintain the food at 41EF (5EC) or below, and

b. discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premise consumption;

5. limits the shelf life to no more that 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, which ever occurs first;

6. includes operational procedures that:

a. prohibit contacting food with bare hands;

b. identify a designated area and the method by which:

i. physical barriers or methods of separation of raw foods and ready-to eat foods minimize cross-contamination, and

ii. access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and

c. delineate cleaning and sanitization procedures for food-contact surfaces; and

7. describes the training program that ensures that the individual responsible for reduced oxygen packaging (vacuum packaging) operation understands the:

a. concepts required for a safe operation;

b. equipment and facilities, and

c. procedures specified in Paragraph A.6 of this Subsection and the HACCP plan.

B. Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:73 (January 2002).

**§4123. Smoked Meat Preparation, Not Fully Cooked [formerly paragraph 22:40-1]**

A. Not fully cooked smoked meats, also referred to as "partially cooked meats," shall be heated to a temperature and time sufficient to allow all parts of the meat to reach between 100EF and 140EF. This product shall be labeled on each retail package "FURTHER COOKING REQUIRED" with lettering of not less than one-half inch.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:73 (January 2002).

**§4125. Smoked Meat Preparation, Fully Cooked [formerly paragraph 22:40-2]**

A. Fully cooked smoked meats shall be heated at a temperature and time sufficient to allow all parts of the meat to reach 155EF except poultry products which shall reach 165EF with no interruption of the cooking process and fish which shall reach 145EF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:73 (January 2002).

**§4127. Open Air Markets**

A. Markets commonly called "open air markets," "curb markets" or "open front markets" shall store all food products above the floor or ground level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:73 (January 2002).

**§4129 Itinerant Food Establishments, Itinerant Retail Food Stores/Markets Permit [formerly paragraph 22:34-1]**

A. No itinerant food establishment or itinerant retail food store/market shall operate without first applying for and receiving a permit from the state health officer.

B. Seasonal permits issued to itinerant food establishments or itinerant retail food stores/markets should coincide with the legally set seasons for the products those markets plan to handle or sell and expire the last day of the season.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:73 (January 2002).

**§4131. Itinerant Food Establishments, Itinerant Food Stores/Markets Plans [formerly paragraph 22:34-2]**

A. Plans and specifications for all proposed itinerant food establishments or itinerant retail food stores/markets shall be submitted to the state health officer for review and approval before applying for and receiving a permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

## Chapter 43. Inspections and Enforcement

**§4301. Inspections, Frequency [formerly paragraph 22:42-1]**

A. Inspections of food establishments or retail food stores/markets shall be performed by the department as often as necessary for the enforcement of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

**§4303. Inspections, Access [formerly paragraph 22:42-2]**

A. Representatives of the state health officer, after proper identification, shall be permitted to enter any food establishment or retail food store/market at any time for the purpose of making inspections to determine compliance with this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

**§4305. Inspections, Records [formerly paragraph 22:42-3]**

A. The state health officer shall be permitted to examine the records of food establishments or retail food stores/markets to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed. Such records shall be maintained for a period of not less than six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

**§4307. Inspections, Reports [formerly paragraph 22:42-4]**

A. Whenever an inspection of a food establishment or retail food store/market is made, the findings shall be recorded on an inspection report form. A copy of the completed inspection report shall be furnished to the person in charge of the food establishment or retail food store/market at the conclusion of the inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

**§4309. Enforcement, General [formerly paragraph 22:43-2]**

A. Enforcement procedures shall be conducted in accordance with Part I of this Title.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

**§4311. Enforcement, Critical Violations [formerly paragraph 22:43-2]**

A. Critical items, such as, but not limited to a potentially hazardous food stored at improper temperature, poor personal hygienic practices, not sanitizing equipment and utensils, no water, contaminated water source, chemical contamination, sewage backup or improper sewage disposal, noted at the time of inspection shall be corrected immediately or by a time set by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

**§4313. Enforcement, Noncritical Violations [formerly paragraph 22: 43-3]**

A. Noncritical items noted at the time of inspection shall be corrected as soon as possible or by a time limit set by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

**§4315. Enforcement, Adulterated Food [formerly paragraph 22:43-4]**

A. Any food product that is adulterated, misbranded or unregistered is subject to seizure and condemnation by the state health officer according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

## Chapter 45. Mobile Food Establishments, Mobile Retail Food Stores/Markets and Pushcarts [formerly paragraph 22:34-3]

**§4501. Interior of Vehicles**

A. The interior of vehicles where food products are prepared and stored shall be constructed of a smooth, easily cleanable surface and maintained in good repair.

B. The interior of vehicles where food products are prepared and stored shall be kept clean.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

**§4503. Packaged Food Products [formerly paragraph 22:34-4]**

A. Trucks or vendors selling packaged food products such as ice cream, frozen novelties, meats, etc. shall operate from a base of operation where leftover products may be properly stored and inspected and the vehicle serviced.

Packaged potentially hazardous foods shall be stored in accordance with §1309 and §1313 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:74 (January 2002).

**§4505. Produce**
**[formerly paragraph 22:34-5]**

A. Produce venders shall comply with §1101, §1103, §1107, §4101 and Chapter 15 of this Part. The produce should be protected by some type of enclosure or cover on the vehicles. Any produce left at the end of the day should be properly stored and protected from insects and rodents overnight.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:75 (January 2002).

**§4507. General**
**[formerly paragraph 23:117-1]**

A. Mobile food establishments, mobile retail food stores/markets or pushcarts shall comply with the requirements of this Part, except as otherwise provided in this section and in §4129 of this Part. The department may impose additional requirements to protect against health hazards related to the conduct of the food establishment or retail food store/market as a mobile operation, may prohibit the sale of some or all potentially hazardous food and when no health hazard will result, may modify requirements of this Part relating to physical facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:75 (January 2002).

**§4509. Plans Submission**
**[formerly paragraph 22:34-2]**

A. Properly prepared plans and specifications for mobile food establishments, mobile retail food stores/markets and pushcarts shall be submitted to the state health officer for review and approval before construction is begun.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:75 (January 2002).

**§4511. Permit**
**[formerly paragraph 23:125]**

A. No person shall operate a mobile food establishment, mobile retail food store/market or pushcart who does not have a valid permit issued to him by the state health officer. Only a person who complies with the requirements of this Part shall be entitled to receive or retain such a permit. Permits are not transferable. A valid permit shall be posted in every mobile food establishment, mobile retail food store/market or pushcart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:75 (January 2002).

**§4513. Issuance of Permits**
**[formerly paragraph 23:126-1]**

A. Any person desiring to operate a mobile food establishment, mobile retail food store/market or pushcart shall make written application for a permit on forms provided by the state health officer. Such application shall include the name and address of each applicant, the location and type of the proposed mobile food establishment, mobile retail food store/market or pushcart, and the signature of each applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:75 (January 2002).

**§4515. Restricted Operations**
**[formerly paragraph 22:34-6]**

A. Boiled peanuts shall be handled in accordance with guidelines set by the state health officer.

B. Hot tamales shall be handled in accordance with guidelines set by the state health officer.

C. Seafood

1. Boiled seafood shall be cooked and handled in accordance with guidelines set by the state health officer.

2. Oysters sold by the sack must be in an enclosed, mechanically refrigerated vehicle and comply with §1101, §1103, §1107, §1109 and §1117 of this Part.

3. Live crabs or crawfish sold by the bushel or sack must be stored either on ice in an enclosed, insulated vehicle or in an enclosed mechanically refrigerated vehicle and comply with §1101, §1103 and §1117 of this Part.

4. Raw shrimp vendors:

a. shall store their shrimp in containers such as ice chests which are smooth, impervious and easily cleanable. The use of styrofoam is prohibited;

b. shall maintain shrimp at a temperature of 41EF (5EC) in accordance with §1309 of this Part;

c. shall provide a minimum one gallon container of sanitizer solution at the proper strength in accordance with §2513.A.2 of this Part to rinse hands, scoops, scales, ice chests, etc., as needed; and

d. shall provide paper hand towels and a waste receptacle.

5. Waste water from any seafood vendor shall be disposed of properly in accordance with §2901 of this Part. Waste water shall be collected in an approved, covered, labeled container for proper disposal. The discharging of waste water onto the ground or into a storm drainage system is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:75 (January 2002).

**§4517. Single-Service Articles**
**[formerly paragraph 23:119]**

A. Mobile food establishments, mobile retail food stores/markets or pushcarts shall provide only single-service articles for use by the consumer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:75 (January 2002).

**§4519. Water System**
**[formerly paragraph 23:120]**

A. A mobile food establishment or a mobile retail food store/market requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing, in accordance with the requirements of this regulation. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of Chapter XIV of the State Sanitary Code. An approved gauge shall be provided to determine contents level.

B. Potable water shall come from an approved source in accord with the requirements of Chapter XII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:76 (January 2002).

**§4521. Waste Retention**
**[formerly paragraph 23:121]**

A. If liquid waste results from operation of a mobile food establishment or mobile retail food store/market, the waste shall be stored in a permanently installed retention tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food establishment or mobile retail food store/market is in motion. All connections on the vehicle for servicing mobile food establishment or mobile retail food store/market waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food establishment or mobile retail food store/market. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system. An approved gauge shall be provided to determine content levels.

B. Wastewater from mobile food establishments or mobile retail food stores/markets shall be disposed of in accord with §2901 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:76 (January 2002).

**§4523. Base of Operations/Commissary**
**[formerly paragraphs 23:122, 23:123, 23:124]**

A. Mobile food establishments, mobile retail food stores/markets and pushcarts shall operate from a commissary or other fixed food establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations.

B. The commissary or other fixed food establishments used as a base of operation for mobile food establishments, mobile retail food stores/markets, or pushcarts shall be constructed and operated in compliance with the requirements of this Part.

C. Servicing Area

1. A servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies.

2. The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

3. Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.

4. The liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewage disposal system in accordance with §2901of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:76 (January 2002).

## Chapter 47. Temporary Food Service

**§4701. General**
**[formerly paragraph 23A:002]**

A. The state health officer or his/her duly authorized representative may impose requirements in addition to those set forth below to protect against health hazards related to the operation of the temporary food service, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of the state sanitary code, in accordance with the Administrative Procedure Act. Nothing in this Part shall be construed to abridge the constitutional rights of the people to peaceably assemble.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:76 (January 2002).

**§4703. Permits**
**[formerly paragraph 23A:003]**

A. A temporary food service permit is not required for those fairs or festivals expressly exempted from regulation by R.S. 40:4.1 thru R.S. 40:4.6 inclusive.

B. When an organizer, promoter, or chairman of an exempted fair or festival makes written request for Office of Public Health inspections and permits and pays applicable fees, he or she shall comply with §4705 of this Part.

C. All fairs or festivals not exempted by Subsection A of this Section, shall not be allowed to operate until applying for, paying applicable fees, and receiving a valid permit to operate from the state health officer or his/her duly authorized representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:76 (January 2002).

**§4705. Written Application**
**[formerly 23A:003-1]**

A. Written application for permit (LHS-31A), signed agreement, and supplemental application (obtainable from the parish health unit) should be received by the state health officer or his/her duly authorized representative at least thirty days in advance of the proposed gathering.

B. A permit to operate shall be required of the festival, fair or other special event organizer or promoter and must be obtained from the local parish health unit. The application for permit shall include the:

1. name and location of the special event;
2. permanent mailing address and phone number;
3. name of the property owner;
4. opening date and closing date;
5. daily hours of operation;
6. size of site (square feet);
7. anticipated maximum attendance at any one time;
8. name of the event organizer or promoter;
9. home address and phone number of the organizer or promoter;
10. business address and phone number of the organizer or promoter;
11. list of each individual food operator/ responsible person, including their home address, home phone number, business phone, and food items to be sold;
12. outline map showing the location of all proposed and existing:
    a. toilets;
    b. lavatory facilities;
    c. water supply sources (including storage tanks) and distribution system;
    d. food service areas (including diagram and description of the types of booths, tents, etc. to be used for the preparation of or dispensing of any food or beverage products);
    e. garbage and refuse storage and disposal areas;
    f. special event command post; and
    g. location of sewage disposal.

C. The following optional information is recommended to be included with the application for permit (on the outline map):

1. areas of assemblage;
2. camping areas (if any);
3. entrance and exits to public roadways;
4. emergency ingress and egress roads;
5. emergency medical and local enforcement command posts;
6. parking facilities;
7. written plan for dust control; and
8. written plan for emergency situations. (e.g. inclement weather, etc).

D. A permit to operate shall be required of each Individual Food Operator/Responsible Person operating a temporary food service unit/booth and must be obtained from the local parish health unit. Permits are not transferrable and shall be issued for each food and/or beverage unit/booth. Permits shall be posted in the temporary food service unit/booth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:77 (January 2002).

**§4707. Ice/Wet Storage**
**[formerly paragraph 23A:004]**

A. Ice shall be made and stored as required by §1907 of this Part and Chapter VI of the State Sanitary Code. Ice scoops must be used. The use of dry ice and/or frozen gel packs are recommended for cold storage. Storage of packaged food in contact with water or undrained ice is prohibited. Sandwiches shall not be stored in direct contact with ice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:77 (January 2002).

**§4709. Equipment**
**[formerly paragraph 23A:004-1]**

A. Equipment and food contact surfaces shall comply with Chapter 21and Chapter 25 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:77 (January 2002).

**§4711. Food Source and Protection**
**[formerly paragraph 23A:005-1]**

A. Food shall be obtained, prepared, stored, handled and transported in accordance with Chapter 11, Chapter 13, Chapter 15, Chapter 17 and Chapter 19 of this Part. The sale of potentially hazardous home prepared food is prohibited.

B. The re-use of containers made of paper, wood, wax, or plastic coated cardboard is prohibited. Containers made of glass, metal, or hard plastic may be re-used only after they are properly washed, rinsed and sanitized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:77 (January 2002).

**§4713. Personal Hygiene**
**[formerly paragraph 23A:007]**

A. Each person working in a food booth shall comply with Chapter 7 and Chapter 9 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:77 (January 2002).

**§4715. Food Stand/Booth Construction**
**[formerly paragraph 23A:008]**

A. [formerly paragraph 23A:008-1] Indoor booths must be constructed with tables, counters, and/or walls on all sides to control patron access. Food service must be from the rear area of the booth or otherwise dispensed to prevent contamination by customers.

B. [formerly paragraph 23A:008-2] Outdoor booths must be constructed to include a roof made of wood, canvas, or other material that protects the interior of the booth from the weather and be enclosed by counters/walls to control patron access.

1. It is recommended that the booth be enclosed on three sides with the fourth, front side encompassing the

service area, so constructed as to minimize the entrance of dust, flies and vermin. The use of screen, mosquito netting, or polyurethane for this purpose is acceptable; counter-service openings shall be minimal.

2. Additional protective covering must be provided to completely enclose outer openings in the event of rain, dust storms or other inclement weather.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:77 (January 2002).

**§4717. Floors**
**[formerly paragraph 23X:008-3]**

A. Floors shall be kept clean, in good repair and level, so as not to allow the pooling of water. It is recommended that floors be constructed of concrete, asphalt, or similar material. Dirt or gravel, when graded to drain, may be used, however, clean removable pallets, duckboard, plywood, or similar material is recommended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:78 (January 2002).

**§4719. Barbecue Places**
**[formerly paragraph 23A:008-4]**

A. Places where barbecue is cooked must be provided with a cover impenetrable by rain or barbecue pits must be provided with covers. All food storage and handling must comply with §4711 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:78 (January 2002).

**§4721. Seafood Boils**
**[formerly paragraph 23A:008-5]**

A. Seafood boiling areas must be provided with a cover impenetrable to rain or a covered boiling apparatus. All food storage and handling must comply with §4711of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:78 (January 2002).

**§4723. Exception**
**[formerly paragraph 23A:008-6]**

A. Pre-packaged, pre-wrapped and properly labeled (according to the provisions of the Louisiana Food, Drug and Cosmetic Law) foods may be offered for sale in open type food stands, providing such food is properly stored and handled as described in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:78 (January 2002).

**§4725. Sanitizing of Utensils and Equipment**
**[formerly paragraph 23A:009]**

A. All utensils and equipment must be washed, rinsed and sanitized at least daily , or as required in Chapter 25 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:78 (January 2002).

**§4727. Water**
**[formerly paragraph 23A:010]**

A. Enough potable water from an approved source shall be provided for drinking, food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing in accordance with Chapter 27 and Chapter 31of this Part and Chapter XII of the State Sanitary Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:78 (January 2002).

**§4729. Sewage (Toilets and Waste)**
**[formerly paragraph 23A:011]**

A. Approved facilities shall be provided and maintained for the disposal of all sewage and liquid waste in accordance with §2901of this Part and Chapter XIII of the State Sanitary Code.

B. Toilets shall be provided at the rate of one per 200 persons or fractional part thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:78 (January 2002).

**§4731. Hand Washing**
**[formerly paragraph 23A:012]**

A. When water under pressure is available, a hand washing facility shall be provided in accordance with §3109 of this Part.

B. When water under pressure is not available at the serving or food dispensing booth, two buckets of water shall be provided for each food concessionaire. One bucket containing potable water must be provided to remove extraneous materials or excess food particles; a second bucket containing a sanitizing solution (100 ppm chlorine, or 25 ppm iodine, or 200 ppm quaternary ammonia) must be provided as a hand dip well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:78 (January 2002).

**§4733. Refuse (Garbage and Trash)**
**[formerly paragraph 23A:013]**

A. All garbage and refuse shall be handled in accordance with Chapter 33 of this Part and Chapter XXVII of the State Sanitary Code.

B. A 50 gallon refuse container shall be provided at the rate of one for each 100 persons at peak anticipated attendance. In addition, each food vendor must have a covered refuse container for booth use.

C. Grease containers must be provided and all used grease must be deposited in these containers. Grease must not be poured down any drain.

D. The grounds and immediate surrounding properties shall be cleaned of refuse as soon as possible following the assembly, within and not exceeding 24 hours of closure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:78 (January 2002).

**§4735. Miscellaneous**
**[formerly paragraph 23A:014-1 and 23A:014-2]**

A. The grounds of each fair, festival and/or temporary food service site shall be well drained and so arranged to provide sufficient space for people assembled, vehicles, sanitary facilities, and equipment.

B. All tents, cars, trailers, food stands and other appurtenances connected with the fair or festival shall at all times be kept in a clean and sanitary condition; and the grounds on which the fair or festival is located shall be kept in a clean and sanitary condition and, when vacated, left in a clean and sanitary condition.

C. The grounds shall be maintained free from accumulations of refuse, health and safety hazards, and from dust wherever possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:79 (January 2002).

**§4737. Vector Control**
**[formerly paragraph 23A:014-2]**

A. Insects, rodents, and other vermin shall be controlled by proper sanitary practices, extermination, or other safe and effective control methods in accord with applicable sections of Chapter 35 and Chapter 39 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:79 (January 2002).

**§4739. Inspections/Violations/Closure**
**[formerly paragraph 23A:015]**

A. All food operations are subject to at least daily inspections by representatives of the department.

B. Critical violations shall be corrected in accordance with §4311 of this Part.

C. Noncritical violations shall be corrected in accordance with §4313 of this Part.

D. Failure to make the necessary corrections or repeated violations will result in monetary penalties, sanctions, suspension of permit, seizure of food and/or further legal action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:79 (January 2002).

The following Table of Contents and Cross Reference listings (Item A. and Item B. respectively) are included as tools to assist staff and/or the public in locating provisions included in the preceding proposed rule which would repeal and replace Chapter XXII, Chapter XXIII, and Chapter XXIIIA of the Sanitary Code. The referenced listings are as follows:

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§3307 - 22:23-4 and 23:078-4
§3501 - 22:24-1 and 23:081
§3503 - 22:24-2
§3505 - 22:24-3 and 23:082
§3507 - 22:24-4 and 23:111
§3701 - 22:22:25 and 23:083
§3703 - 22:26 and 23:090
§3705 - 22:27-1 and 23:098
§3707 - 22:27-2 and 23:099
§3709 - 22:28-1 and 23:100
§3711 - 22:28-2
§3713 - 22:28-3
§3901 - 22:29-1 and 23:105
§3903 - 22:29-2 and 23:106
§3905 - 22:29-3 and 23:108
§4101 - 22:30 and 23:116
§4103 - 22:32
§4105 - 22:33 and 23:102
§4107 - 22:35-1 and 23:050-1
§4109 - 22:35-2 and 23:050-2
§4111 - 22:35-3 and 23:050
§4113 - 22:35-4 and 23:114-2
§4115 - 22:35-5 and 23:113-1
§4117 - 22:36 and 23:112
§4119 - 22:37 and 23:115
§4121 - 22:39
§4123 - 22:40-1
§4125 - 22:40-2
§4127 - new
§4129 - 22:34-1
§4131 - 22:34-2
§4301 - 22:42-1 and 23:127
§4303 - 22:42-2 and 23:128
§4305 - 22:42-3 and 23:129
§4307 - 22:42-4 and 23:129
§4309 - 22:43-1
§4311 - 22:43-2
§4313 - 22:43-3
§4315 - 22:43-4
§4501 - 22:34-3
§4503 - 22:34-4
§4507 - 23:117-1
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§4511 - 23:125
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§4515 - 22:34-6
§4517 - 23:119
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§4701 - 23A:002
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§4705 - 23A:003-1
§4707 - 23A:004
§4709 - 23A:004-1
§4711 - 23A:005-1
§4713 - 23A:007
§4715 - 23A:008
§4717 - 23A:008-3
§4719 - 23A:008-4
§4721 - 23A:008-5
§4723 - 23A:008-6
§4725 - 23A:009
§4727 - 23A:010
§4729 - 23A:011
§4731 - 23A:012
§4733 - 23A:013
§4735 - 23A:014-1 and 23A:014-2
§4737 - 23A:014-2
§4739 - 23A:015

David W. Hood
Secretary

0201#049

## RULE

### Department of Health and Hospitals
### Office of the Secretary

AIDS Trust Fund (LAC 46:C.101-107)

The Department of Health and Hospitals, Office of the Secretary, has repealed the following Part in its entirety, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 46:2531. This rule is being repealed because the AIDS Trust Fund Board no longer exists. The HIV Trust Fund Board was originally established in 1987, to review the eligibility of programs to receive funding for research and educating the public regarding Acquired Immune Deficiency Syndrome. Later, the HIV Commission was established by law and assumed the powers, duties, and responsibility for all HIV related issues, however, the published rule was not repealed when the commission was established. Therefore, this rule is strictly a housekeeping measure.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

### Title 46
### PROFESSIONAL AND OCCUPATIONAL STANDARDS
### Part C. AIDS Trust Fund Board

#### Chapter 1. General Provisions

**§101. Purpose**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:82 (January 2002).

**§103. Powers and Duties**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:82 (January 2002).

**§105. Memberships**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:83 (January 2002).

**§107. Officers**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2531.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, AIDS Trust Fund Board, LR 13:239 (April 1987), repealed by the Department of Health and Hospitals, Office of the Secretary, LR 28:83 (January 2002).

David W. Hood
Secretary

0201#082

**RULE**

**Department of Natural Resources**
**Office of Conservation**
**Pipeline Division**

Pipeline Safety—Hazardous Liquids
(LAC 33:V.30105, 30112, 30129, 30135, 30149, 30292-30296, 30298, 30351)

**Title 33**
**ENVIRONMENTAL QUALITY**
**Part V. Hazardous Waste and Hazardous Materials**
**Subpart 3. Natural Resources**
**Chapter 301. Transportation of Hazardous Liquids by Pipeline**
**Subchapter A. General**
**§30105. Definitions**

* * *

*Unusually Sensitive Area (USA)*—a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release, as identified under §30112.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:861 (August 1992), LR 21:815 (August 1995), LR 28:83 (January 2002).

**§30112. Unusually Sensitive Areas (USAs)**

A. As used in this part, a USA means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.

1. A USA drinking water resource is:

a. the water intake for a Community Water System (CWS) or a Non-Transient Non-Community Water System (NTNCWS) that obtains its water supply primarily from a surface water source and does not have an adequate alternative drinking water source;

b. the Source Water Protection Area (SWPA) for a CWS or a NTNCWS that obtains its water supply from a Class I or Class IIA aquifer and does not have an adequate alternative drinking water source. Where a state has not yet identified the SWPA, the Wellhead Protection Area (WHPA) will be used until the state has identified the SWPA; or

c. the sole source aquifer recharge area where the sole source aquifer is a karst aquifer in nature.

2. An USA ecological resource is:

a. an area containing a critically imperiled species or ecological community;

b. a multi-species assemblage area;

c. a migratory waterbird concentration area;

d. an area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community is aquatic, aquatic dependent, or terrestrial with a limited range; or

e. an area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community occurrence is considered to be one of the most viable, highest quality, or in the best condition as identified by an element occurrence ranking (EORANK) of A (excellent quality) or B (good quality).

3. As used in this part:

*Adequate Alternative Drinking Water Source*—a source of water that currently exists, can be used almost immediately with a minimal amount of effort and cost, involves no decline in water quality, and will meet the consumptive, hygiene, and fire fighting requirements of the existing population of impacted customers for at least one month for a surface water source of water and at least six months for a groundwater source.

*Aquatic or Aquatic Dependent Species or Community*—a species or community that primarily occurs in aquatic, marine, or wetland habitats, as well as species that may use terrestrial habitats during all or some portion of their life cycle, but that are still closely associated with or dependent upon aquatic, marine, or wetland habitats for some critical component or portion of their life-history (i.e., reproduction, rearing and development, feeding, etc).

*Class I Aquifer*—an aquifer that is surficial or shallow, permeable, and is highly vulnerable to contamination. Class I aquifers include:

i. *Unconsolidated Aquifers (Class Ia)*—that consist or surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These aquifers generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all Class Ia aquifers are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of these aquifers is the thickness of the unsaturated zone and the presence of fine-grained material;

ii. *Soluble and Fractured Bedrock Aquifers (Class Ib)*—Lithologies in this class include limestone, dolomite, and, locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these aquifers have a wide range of permeability. Also

included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability;

iii. *Semiconsolidated Aquifers (Class Ic)***C**that generally contain poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated units, such as occurs in parts of the High Plains Aquifer; or

iv. *Covered Aquifers (Class Id)***C**that are any Class I aquifer overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrian, and loess deposits.

*Class IIa Aquifer***C**a Higher Yield Bedrock Aquifer that is consolidated and is moderately vulnerable to contamination. These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gallons per minute to be included in this class. Local fracturing may contribute to the dominant primary porosity and permeability of these systems.

*Community Water System (CWS)***C**a public water system that serves at least 15 service connections used by year-round residents of the area or regularly serves at least 25 year-round residents.

*Critically Imperiled Species or Ecological Community (Habitat)***C**an animal or plant species or an ecological community of extreme rarity, based on The Nature Conservancy=s Global Conservation Status Rank. There are generally five or fewer occurrences, or very few remaining individuals (less than 1,000) or acres (less than 2,000). These species and ecological communities are extremely vulnerable to extinction due to some natural or man-made factor.

*Depleted Marine Mammal Species***C**a species that has been identified and is protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.). The term "depleted" refers to marine mammal species that are listed as threatened or endangered, or are below their optimum sustainable populations (16 U.S.C. 1362). The term "marine mammal" means "any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)" (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea, lions, and walruses, and the order Cetacea includes dolphins, porpoises, and whales.

*Ecological Community***C**means an interacting assemblage of plants and animals that recur under similar environmental conditions across the landscape.

*Element Occurrence Rank (EORANK)***C**means the condition or viability of a species or ecological community occurrence, based on a population's size, condition, and landscape context. EORANKs are assigned by the Natural Heritage Programs. An EORANK of A means an excellent quality and an EORANK of B means good quality.

*Imperiled Species or Ecological Community (Habitat)***C**means a rare species or ecological community, based on The Nature Conservancy=s Global Conservation Status Rank. There are generally six to 20 occurrences, or few remaining individuals (1,000 to 3,000) or acres (2,000 to 10,000). These species and ecological communities are vulnerable to extinction due to some natural or man-made factor.

*Karst Aquifer***C**means an aquifer that is composed of limestone or dolomite where the porosity is derived from connected solution cavities. Karst aquifers are often cavernous with high rates of flow.

*Migratory Waterbird Concentration Area***C**a designated Ramsar site or a Western Hemisphere Shorebird Reserve Network site.

*Multi Species Assemblage Area***C**an area where three or more different critically imperiled or imperiled species or ecological communities, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur.

*Non-transient Non-community Water System (NTNCWS)***C**means a public water system that regularly serves at least 25 of the same persons over six months per year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

*Public Water System (PWS)***C**a system that provides the public water for human consumption through pipes or other constructed conveyances, if such systems has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. These systems include the sources of the water supplies, i.e., surface or ground. PWS can be community, non-transient non-community, or transient non-community systems.

*Ramsar Site***C**a site that has been designated under The Convention on Wetlands of International Importance Especially as Waterfowl Habitat program. Ramsar sites are globally critical wetland areas that support migratory waterfowl. These include wetland areas that regularly support 20,000 waterfowl; wetland areas that regularly support substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity; and wetland areas that regularly support 1 percent of the individuals in a population of one species or subspecies of waterfowl.

*Sole Source Aquifer (SSA)***C**an area designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the "sole or principal" source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50 percent or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard. A sole source aquifer that is karst in nature is one composed of limestone where the porosity is derived from connected solution cavities. They are often cavernous, with high rates of flow.

*Source Water Protection Area (SWPA)***C**that the area delineated by the state for a public water supply system (PWS) or including numerous PWSs, whether the source is ground water or surface water or both, as part of the state source water assessment program (SWAP) approved by EPA under §1453 of the Safe Drinking Water Act.

*Species***C**species, subspecies, population stocks, or distinct vertebrate populations.

*Terrestrial Ecological Community with a Limited Range***C**a non-aquatic or non-aquatic dependent ecological community that covers less than five acres.

*Terrestrial Species with a Limited Range***C**a non-aquatic dependent animal or plant species that has a range of no more than five acres.

*Threatened and Endangered Species (T&E)***C**an animal or plant species that has been listed and is protected under the Endangered Species Act of 1973, as amended (ESA73) (16 U.S.C. 1531 et seq.).

i. *Endangered Species***C**any species which is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532).

ii. *Threatened Species***C**any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532).

*Transient Non-community Water System (TNCW)***C**means a public water system that does not regularly serve at least 25 of the same persons over six months per year. This type of water system serves a transient population found at rest stops, campgrounds, restaurants, and parks with their own source of water.

*Wellhead Protection Area (WHPA)***C**the surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass and eventually reach the water well or well field.

*Western Hemisphere Shorebird Reserve Network (WHSRN) Site***C**an area that contains migratory shorebirds concentrations and has been designated as a hemispheric reserve, international reserve, regional reserve, or endangered species reserve. Hemispheric reserves host at least 500,000 shorebirds annually or 30 percent of a species flyway population. International reserves host 100,000 shorebirds annually or 15 percent of a species flyway population. Regional reserves host 20,000 shorebirds annually or 5 percent of a species flyway population. Endangered species reserves are critical to the survival of endangered species and no minimum number of birds is required.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:83 (January 2002).

## Subchapter B. Reporting Accidents and Safety-Related Conditions

### §30129. Addressee for Written Reports

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), repealed LR 28:85 (January 2002).

### §30135. Filing Safety-Related Condition Report

A. Each report of a safety-related condition under §30133.A must be filed (received by the commissioner) in writing within five working days (not including Saturday, Sunday, or state holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by telefacsimile (FAX), dial (202) 366-7128 and for Louisiana (225) 342-5529.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 28:85 (January 2002).

### §30149. Address for Written Reports

A. Each written report required by this subchapter must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 2335, 400 Seventh Street SW, Washington, DC 20590 and concurrently to Office of Conservation, Pipeline Safety, P.O. Box 94275, Baton Rouge, LA 70804-9275. However, accident reports for intrastate pipelines subject to the jurisdiction of a state agency pursuant to a certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) may be submitted in duplicate to that state agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Resource Manager. Safety-related condition reports required by §30133 for intrastate pipelines must be submitted concurrently to the state agency, and if that agency acts as an agent of the secretary with respect to interstate pipelines, safety related condition reports for these pipelines must be submitted concurrently to that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:85 (January 2002).

## Subchapter F. Operation and Maintenance

### §30292. Smoking or Open Flames

A. Each operator shall prohibit smoking and open flames in each pump station area and each breakout tank area where there is a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629(August 1989), amended LR 28:85 (January 2002).

### §30293. Public Education

A. Each operator shall establish a continuing educational program to enable the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials. The program must be conducted in English or in other languages commonly understood by a significant number and concentration of non-English speaking population in the operator's operating areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:866 (August 1992), LR 28:85 (January 2002).

**§30294. Damage Prevention Program**

A. Except as provided in Subsection C of this Section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term "excavation activities" includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

B. An operator may comply with any of the requirements of Subsection C of this Section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of the responsibility for compliance with this section. However, an operator must perform the duties of Paragraph C.3 of this Section through participation in a one-call system, if that one-call system is a qualified one call-system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purpose of the Section, a one-call system is considered a "qualified one-call system" if it meets the requirements of Paragraphs B.1 or B.2 of this Section:

1. the state has adopted a one-call damage prevention program under 49 CFR 198.37; or

2. the one-call system:

i. is operated in accordance with 49 CFR 198.39;

ii. provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

iii. assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.

C. The damage prevention program required by Subsection A of this Section must, at a minimum:

1. include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located;

2. provides for notification of the public in the vicinity of the pipeline and actual notification of persons identified in Paragraph C.1. of this Section of the following as often as needed to make them aware of the damage prevention program:

i. the program's existence and purpose; and

ii. how to learn the location of underground pipelines before excavation activities are begun;

3. provide a means of receiving and recording notification of planned excavation activities;

4. if the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings;

5. provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins;

6. provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

i. the inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

ii. in the case of blasting, any inspection must include leakage surveys.

D. A damage prevention program under this section is not required for the following pipelines:

1. pipelines located offshore;

2. pipelines to which access is physically controlled by the operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 24:1315 (July 1998), amended LR 28:86 (January 2002).

**§30295. CPM Leak Detection**

A. Each computational pipeline monitoring (CPM) leak detection system installed on a hazardous liquid pipeline transporting liquid in single phase (without gas in the liquid) must comply with API 1130 in operating, maintaining, testing, record keeping, and dispatcher training of the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:86 (January 2002).

**§30296. High Consequence Areas Definitions**

A. The following definitions apply to this section and §30297.

*Emergency Flow Restricting Device or EFRD*—means a check valve or remote control valve as follows.

a. *Check valve*—means a valve that permits fluid to flow freely in one direction and contains a mechanism to automatically prevent flow in the other direction.

b. *Remote Control Valve or RCV*—means any valve that is operated from a location remote from where the valve is installed. The RCV is usually operated by the supervisory control and data acquisition (SCADA) system. The linkage between the pipeline control center and the RCV may be by fiber optics, microwave, telephone lines, or satellite.

*High Consequence Area*—

a. *Commercially Navigable Waterway*—a waterway where a substantial likelihood of commercial navigation exists;

b. *High Population Area*—an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;

c. *Other Populated Area*—a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;

d. *Unusually Sensitive Area*, as defined in §30112.

AUTHORITY NOTE: Promulgated in accordance with R.S.30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:86 (January 2002).

**§30298. Pipeline Integrity Management in High Consequence Areas**

A. Which operators must comply? This Section applies to each operator who owns or operates a total of 500 or more miles of hazardous liquid pipeline subject to this Part.

B. What must an operator do?

1. No later than March 31, 2002, an operator must develop a written integrity management program that addresses the risks on each pipeline segment that could affect a high consequence area. An operator must include in the program:

a. an identification of all pipeline segments that could affect a high consequence area. A pipeline segment in a high consequence area is presumed to affect that area unless the operator's risk assessment effectively demonstrates otherwise. (See Appendix C of this Part for guidance on identifying pipeline segments.) An operator must complete this identification no later than December 31, 2001;

b. a plan for baseline assessment of the line pipe (see Subsection C of this Section);

c. a framework addressing each element of the integrity management program, including continual integrity assessment and evaluation (see Subsections F and J of this Section). The framework must initially indicate how decisions will be made to implement each element.

2. An operator must implement and follow the program it develops.

3. In carrying out this Section, an operator must follow recognized industry practices unless the section specifies otherwise or the operator demonstrates that an alternative practice is supported by a reliable engineering evaluation and provides an equivalent level of public safety and environmental protection.

C. What must be in the baseline assessment plan?

1. An operator must include each of the following elements in its written baseline assessment plan:

a. the methods selected to assess the integrity of the line pipe. For low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure, an operator must select integrity assessment methods capable of assessing seam integrity and of detecting corrosion and deformation anomalies. An operator must assess the integrity of the line pipe by:

i. internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves;

ii. pressure test conducted in accordance with Subchapter E of this Chapter; or

iii. other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 90 days before conducting the assessment, by sending a notice to the address specified in §30147;

b. a schedule for completing the integrity assessment;

c. an explanation of the assessment methods selected and evaluation of risk factors considered in establishing the assessment schedule.

2. An operator must document, prior to implementing any changes to the plan, any modification to the plan, and reasons for the modification.

D. When must the baseline assessment be completed?

1. Time Period. An operator must establish a baseline assessment schedule to determine the priority for assessing the pipeline segments. An operator must complete the baseline assessment by March 31, 2008. An operator must assess at least 50 percent of the pipe subject to the requirements of this section, beginning with the highest risk pipe, by September 30, 2004.

2. Prior assessment. To satisfy the requirements of Subparagraph C.1.a of this Section, an operator may use an integrity assessment conducted after January 1, 1996, if the integrity assessment method meets the requirements of this section. However, if an operator uses this prior assessment as its baseline assessment, the operator must re-assess the line pipe according to the requirements of Paragraph J.3 of this Section.

3. Newly-Identified Areas

a. When information is available from the information analysis (See Subsection G of this Section), or from Census Bureau maps, that the population density around a pipeline segment has changed so as to fall within the definition in §30296 of a high population area or other populated area, the operator must incorporate the area into its baseline assessment plan as a high consequence area within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

b. An operator must incorporate a new unusually sensitive area into its baseline assessment plan within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

E. What are the risk factors for establishing an assessment schedule (for both the baseline and continual integrity assessments)?

1. An operator must establish an integrity assessment schedule that prioritizes pipeline segments for assessment (see Paragraphs D.1 and J.3 of this Section). An operator must base the assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to:

a. results of the previous integrity assessment, defect type and size that the assessment method can detect, and defect growth rate;

b. pipe size, material, manufacturing information, coating type and condition, and seam type;

c. leak history, repair history and cathodic protection history;

d. product transported;

e. operating stress level;

f. existing or projected activities in the area;

g. local environmental factors that could affect the pipeline (e.g., corrosivity of soil, subsidence, climatic);

h. geo-technical hazards; and

i. physical support of the segment such as by a cable suspension bridge.

2. Appendix C of this Part provides further guidance on risk factors.

F. What are the elements of an integrity management program? An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at a minimum, each of the following elements in its written integrity management program:

1. a process for identifying which pipeline segments could affect a high consequence area;

2. a baseline assessment plan meeting the requirements of Subsection C of this Section;

3. an analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure (See Subsection G of this Section);

4. criteria for repair actions to address integrity issues raised by the assessment methods and information analysis (See Subsection H of this Section);

5. a continual process of assessment and evaluation to maintain a pipeline's integrity (See Subsection J of this Section);

6. identification of preventive and mitigative measures to protect the high consequence area (See Subsection I of this Section);

7. methods to measure the program's effectiveness (See Subsection K of this Section);

8. a process for review of integrity assessment results and information analysis by a person qualified to evaluate the results and information (see Paragraph H.2 of this Section).

G. What is an information analysis? In periodically evaluating the integrity of each pipeline segment (Subsection J of this Section), an operator must analyze all available information about the integrity of the entire pipeline and the consequences of a failure. This information includes:

1. information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment;

2. data gathered through the integrity assessment required under this Section;

3. data gathered in conjunction with other inspections, tests, surveillance and patrols required by this Part, including, corrosion control monitoring and cathodic protection surveys; and

4. information about how a failure would affect the high consequence area, such as location of the water intake.

H. What actions must be taken to address integrity issues?

1. General Requirements. An operator must take prompt action to address all pipeline integrity issues raised by the assessment and information analysis. An operator must evaluate all anomalies and repair those anomalies that could reduce a pipeline=s integrity. An operator must comply with §30281 in making a repair.

2. Discovery of a Condition. Discovery of a condition occurs when an operator has adequate information about the condition to determine the need for repair. Depending on circumstances, an operator may have adequate information when the operator receives the preliminary internal inspection report, gathers and integrates information from the other inspections or the periodic evaluation, excavates the anomaly, or when an operator receives the final internal inspection report. The date of discovery can be no later than the date of the integrity assessment results or the final report.

3. Review of Integrity Assessment. An operator must include in its schedule for evaluation and repair (as required by Paragraph H.4 of this Section), a schedule for promptly reviewing and analyzing the integrity assessment results. After March 31, 2004, an operator's schedule must provide for review of the integrity assessment results within 120 days of conducting each assessment. The operator must obtain and assess a final report within an additional 90 days.

4. Schedule for Repairs. An operator must complete repairs according to a schedule that prioritizes the conditions for evaluation and repair. An operator must base the schedule on the risk factors listed in Paragraph E.1 of this Section and any pipeline-specific risk factors the operator develops. If an operator cannot meet the schedule for any of the conditions addressed in Subparagraphs H.5.a through d of this Section, the operator must justify the reasons why the schedule cannot be met and that the changed schedule will not jeopardize public safety or environmental protection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safely though a temporary reduction in operating pressure until a permanent repair is made. An operator must send a notice to the address specified in §30147 or to the facsimile number specified in §30135.

5. Special Requirements for Scheduling Repairs

a. Immediate Repair Conditions. An operator's evaluation and repair schedule must provide for immediate repair conditions. To maintain safety, an operator will need to temporarily reduce operating pressure or shut down the pipeline until the operator can complete the repair of these conditions. An operator must base the temporary operating pressure reduction on remaining wall thickness. An operator must treat the following conditions as immediate repair conditions:

i. metal loss greater than 80 percent of nominal wall regardless of dimensions;

ii. predicted burst pressure less than the maximum operating pressure at the location of the anomaly. Burst pressure has been calculated from the remaining strength of the pipe, using a suitable metal loss strength calculation, e.g., ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991)) or AGA Pipeline Research Committee Project PR-3-805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are available at the addresses listed at §30107;

iii. dents on the top of the pipeline (above 4 and 8 o'clock position) with any indicated metal loss;

iv. significant anomaly that in the judgment of the person evaluating the assessment results requires immediate action.

b. 60-Day Conditions. Except for conditions listed in Subparagraph H.5.a of this Section, an operator must schedule for evaluation and repair all dents, regardless of size, located on the top of the pipeline (above the 4 and 8

o'clock position) within 60 days of discovery of the condition:

c. Six-Month Conditions. Except for conditions listed in Subparagraphs H.5.a or b of this Section, an operator must schedule evaluation and repair of the following within six months of discovery of the condition:

i. dents with metal loss or dents that affect pipe curvature at the girth or seam weld;

ii. dents with reported depths greater than 6 percent of the pipe diameter;

iii. remaining strength of the pipe results in a safe operating pressure that is less than the current established MOP at the location of the anomaly using a suitable safe operating pressure calculation method (e.g., ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991)) or AGA Pipeline Research Committee Project PR-3-805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are available at the addresses listed at §30107;

iv. areas of general corrosion with a predicted metal loss of >50 percent of nominal wall;

v. predicted metal loss of >50 percent of nominal wall at crossings of another pipeline;

vi. weld anomalies with a predicted metal loss >50 percent of nominal wall;

vii. potential crack indications that when excavated are determined to be cracks;

viii. corrosion of or along seam welds;

ix. gouges or grooves greater than 12.5 percent of nominal wall.

d. Other Conditions. An operator must schedule evaluation and repair of the following conditions:

i. data that reflect a change since last assessed;

ii. data that indicates mechanical damage that is located on the top half of the pipe;

iii. data that indicate anomalies abrupt in nature;

iv. data that indicate anomalies longitudinal in orientation;

v. data that indicate anomalies over a large area;

vi. anomalies located in or near casings, crossings of another pipeline, and areas with suspect cathodic protection.

I. What preventive and mitigative measure must an operator take to protect the high consequence area?

1. General Requirements. An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. Those measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.

2. Risk Analysis Criteria. In identifying the need for additional preventive and mitigative measures, an operator must evaluate the likelihood of a pipeline release occurring and how a release could affect the high consequence area. This determination must consider all relevant risk factors, including, but not limited to:

a. terrain surrounding the pipeline segment, including drainage systems such as small streams and other smaller waterways that could act as a conduit to the high consequence area;

b. elevation profile;

c. characteristics of the product transported;

d. amount of product that could be released;

e. possibility of a spillage in a farm field following the drain tile into a waterway;

f. ditches along side a roadway the pipeline crosses;

g. physical support of the pipeline segment such as by a cable suspension bridge;

h. exposure of the pipeline to operating pressure exceeding established maximum operating pressure.

3. Leak Detection. An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator's evaluation must, at least, consider, the following factors-length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

4. Emergency Flow Restricting Devices (EFRD). If an operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors**C**the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence are, and benefits expected by reducing the spill size.

J. What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

1. General. After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

2. Evaluation. An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. An operator must base the frequency of evaluation on risk factors specific to its pipeline, including the factors specified in Subsection E of this Section. The evaluation must consider the past and present integrity assessment results, information analysis (Subsection G of this Section), and decisions about repair, and preventive and mitigative actions (Subsections H and I of this Section).

3. Assessment Intervals. An operator must establish intervals not to exceed five years for continually assessing the line pipe's integrity. An operator must base the assessment intervals on the risk the line pipe poses to the high consequence area to determine the priority for assessing the pipeline segments. An operator must establish the

assessment intervals based on the factors specified in Subsection E of this Section, the analysis of the results from the last integrity assessment, and the information analysis required by Subsection G of this Section.

4. Variance from the Five-Year Intervals in Limited Situations

a. Engineering Basis. An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The justification must be supported by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technology, that provides an understanding of the condition of the line pipe equivalent to that which is obtainable under Paragraph J.2 of this Section. An operator must notify OPS nine months before the end of the intervals of five years or less of the reason why the operator intends to justify a longer interval. An operator must send a notice to the address specified in §30147 or to the facsimile number specified in §30135. The notice must state a proposed alternative interval.

b. Unavailable Technology. An operator may require a longer assessment period for a segment of line pipe (for example, because sophisticated internal inspection technology is not available). An operator must justify the reasons why it cannot comply with the required assessment period and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. An operator must notify OPS 180 days before the end of the intervals of the five years or less that the operator may requires a linger assessment interval. An operator must send a notice to the address specified in §30147 or to the facsimile number specified in §30135. The operator may have up to an additional 180 days to complete the assessment.

5. Assessment Methods. An operator must assess the integrity of the line pipe by:

a. internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves;

b. pressure test conducted in accordance with Subchapter E of this Chapter; or

c. other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify OPS 60 days before conducting the assessment, by sending a notice to the address specified in §30147 or to the facsimile number specified in §30135.

6. However, for low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure, an operator must select integrity assessment methods capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

K. What methods to measure program effectiveness must be used? An operator's program must include methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. See Appendix C of this Part for guidance on methods that can be used to evaluate a program's effectiveness.

1. What records must be kept? An operator must maintain for review during an inspection:

a. a written integrity management program in accordance with Subsection B of this Section;

b. documents to support the decisions and analyses, including any modifications, justifications, variances, deviations, and determinations made, and actions taken, to implement and evaluate each element of the integrity management program listed in Subsection F of this Section.

2. See Appendix C of this Part for examples of records an operator would be required to keep.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:87 (January 2002).

### §30351. Appendix C to Part VC Guidance for Implementation of Integrity Management Program

A. This Appendix gives guidance to help an operator implement the requirements of the integrity management program rule in §§30296 and 30298. Guidance is provided on:

1. information on operator may use to identify a high consequence area and factors an operator can use to consider the potential impacts of a release on an area;

2. risk factors an operator can use to determine an integrity assessment schedule;

3. safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, an operator may use to determine if a pipeline segment falls into a high, medium or low risk category;

4. types of internal inspection tools an operator could use to find pipeline anomalies;

5. measure an operator could use to measure an integrity management program's performance; and

6. types of records an operator will have to maintain.

B. Identifying a high consequence area and factors for considering a pipeline segment's potential impact on a high consequence area.

1. The rule defines High Consequence Area as a high population area, an other populated area, an unusually sensitive area, or a commercially navigable waterway. The Office of Pipeline Safety (OPS) will map these areas on the National Pipeline Mapping Service (NPMS). An operator, member of the public, or other government agency may view and download the data from the NPMS home page http://www.npms.rspa.dot.gov. OPS will maintain the NPMS and update it periodically. However, it is an operator's responsibility to ensure that it has identified all high consequence areas that could be affected by a pipeline segment. An operator is also responsible for periodically evaluating its pipeline segments to look for population or environmental changes that may have occurred around the pipeline and to keep its program current with this information. (Refer to §30298.D.3) For more information to help in identifying high consequence areas, an operator may refer to:

a. Digital Data on populated areas available on U.S. Census Bureau maps;

b. Geographic Database on the commercial navigable waterways available on http://www.bts.gov/gis/ntatlas/networks.html;

c. the Bureau of Transportation Statistics database that includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from the BTS website at http://www.bts.gov/gis/ntatlas/networks/html.

d. the Rule requires an operator to include a process in its program for identifying which pipeline segments could affect a high consequence area and to take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. (See §30298.F and I) Thus, an operator will need to consider how each pipeline segment could affect a high consequence area. The primary source for the listed risk factors is a US DOT study on instrumental Internal Inspection devices (November 1992). Other sources include the National Transportation Safety Board, the Environmental Protection Agency and the Technical Hazardous Liquid Pipeline Safety Standards, Committee. The following list provides guidance to an operator on both the mandatory and additional factor:

1. terrain surrounding the pipeline. An operator should consider the contour of the land profile and if it could allow the liquid from a release to enter a high consequence area. An operator can get this information from topographical maps such as U.S. Geological Survey quadrangle maps;

2. drainage systems such as small streams and other smaller waterways that could serve as a conduit to a high consequence area;

3. crossing of farm tile fields. An operator should consider the possibility of a spillage in the field following the drain tile into a waterway;

4. crossing of roadways with ditches along the side. The ditches could carry a spillage to a waterway;

5. the nature and characteristics of the product the pipeline is transporting (refined products, crude oils, highly volatile liquids, etc.) Highly volatile liquids becomes gaseous when exposed to the atmosphere. A spillage could create a vapor cloud that could settle into the lower elevation of the ground profile;

6. physical support of the pipeline segment such as by a cable suspension bridge. An operator should look for stress indicators on the pipeline (strained supports, inadequate support at towers), atmospheric corrosion, vandalism, and other obvious signs of improper maintenance;

7. operating condition of pipeline (pressure, flow rate, etc.) Exposure of the pipeline to operating pressure exceeding established maximum operating pressure;

8. the hydraulic gradient of pipeline;

9. the diameter of pipeline, the potential release volume, and the distance between the isolation points;

10. potential physical pathways between the pipeline and the high consequence area;

11. response capability (time to respond, nature of response);

12. potential natural forces inherent in the area (flood zones, earthquakes, subsidence areas, etc.).

C. Risk factors for Establishing Frequency of Assessment

1. By assigning weights or values to the risk factors, and using the risk indicator tables, an operator can determine the priority for assessing pipeline segments, beginning with those segments that are of highest risk, that have not previously been assessed. This list provides some guidance on some of the risk factors to consider (See §30298.E). An operator should also develop factors specific to each pipeline segment it is assessing, including:

a. populated areas, unusually sensitive environmental areas, National Fish Hatcheries, commercially navigable waters, areas where people congregate;

b. results from previous testing/inspection. (See §30298.H);

c. leak history. (See leak history risk table.)

d. known corrosion or condition of pipeline. (See §30298.G)

e. cathodic protection history;

f. type and quality of pipe coating (disbonded coating results in corrosion);

g. age of pipe (older pipe shows more corrosion-may be uncoated or have an ineffective coating) and type of pipe seam (See Age of Pipe risk table);

h. product transported (highly volatile, highly flammable and toxic liquids present a greater threat for both people and the environment) (See Product Transported risk table);

i. pipe wall thickness (thicker walls give a better safety margin);

j. size of pipe (higher volume release if the pipe ruptures;

k. location related to potential ground movement (e.g., seismic faults, rock quarries, and coal mines); climatic (permafrost causes settlement-Alaska); geologic (landslides or subsidence);

l. security of throughput (effects on customers if there is failure requiring shutdown);

m. time since the last internal inspection/pressure testing;

n. with respect to previously discovered defects/anomalies, the type, growth rate, and size;

o. operating stress levels in the pipeline;

p. location of the pipeline segment as it relates to the ability of the operator to detect and respond to a leak. (e.g., pipelines deep underground, or in locations that make leak detection difficult without specific sectional monitoring and/or significantly impede access for spill response or any other purpose);

q. physical support of the segment such as by a cable suspension bridge;

r. non-standard or other than recognized industry practice on pipeline installation (e.g., horizontal directional drilling).

2. Example. This example illustrates a hypothetical model used to establish an integrity assessment schedule for a hypothetical pipeline segment. After we determine the risk factors applicable to the pipeline segment, we then assign values or numbers to each factor, such as, high (5), moderate (3), or low (1). We can determine an overall risk classification (A, B, C) for the segment using the risk tables and a sliding scale (values 5 to 1) for risk factors for which tables are not provided. We could classify a segment as C if it fell above 2/3 of maximum value (highest overall risk value for any one segment when compared with other segments of a pipeline), a segment B if it fell between 1/3 to 2/3 of maximum value, and the remaining segments as A.

a. For the baseline assessment schedule, we would plan to assess 50 percent of all pipeline segments covered by the rule, beginning with the highest risk segments, within the first 3 1/2 years and the remaining segments within the seven-year period. For the continuing integrity assessments, we could plan to assess the C segments within the first two years of the schedule, the segments classified as moderate risk no later than year three or four and the remaining lowest risk segments no later than year five.

b. For our hypothetical pipeline segment, we have chosen the following risk factors and obtained risk factor values from the appropriate table. The values assigned to the risk factors are for illustration only.

| | | |
|---|---|---|
| Age of Pipeline: | Assume 30 years old (refer to "Age of Pipeline" risk table) | Risk Value = 5 |
| Pressure Tested: | Tested once during construction | Risk Value = 5 |
| Coated: | (yes/no) - yes | |
| Coating Condition: | Recent excavation of suspected areas showed holidays in coating (potential corrosion risk | Risk Value = 5 |
| Cathodically Protected: | (yes/no) - yes | Risk Value = 1 |
| Date Cathodic Protection Installed: | Five years after pipeline was constructed (Cathodic protection installed within one year of the pipeline's construction is generally considered low risk.) | Risk Value = 3 |
| Close Interval Survey: | (yes/no) - no | Risk Value = 5 |
| Interval Inspection Tool Used: | (yes/no) - yes | |
| Date of Pig Run? | In last five years | Risk Value = 1 |
| Anomalies Found: | (yes/no) - yes, but do not pose an immediate safety risk or environment hazard | Risk Value = 3 |
| Leak History: | yes, one spill in last 10 years. (refer to "Leak History" risk table) | Risk Value = 2 |
| Product Transported: | Diesel fuel. Product low risk. (refer to "Product" risk table) | Risk Value = 1 |
| Pipe Size: | 16 inches. Size presents moderate risk (refer to "Line Size" risk table) | Risk Value = 3 |

c. Overall risk value for this hypothetical segment of pipe is 34. Assume we have two other pipeline segments for which we conduct similar risk rankings. The second pipeline segment has an overall risk value of 20, and the third segment, 11. For the baseline assessment we would establish a schedule where we assess the first segment (highest risk segment) within two years, the second segment within five years and the third segment within seven years. Similarly, for the continuing integrity assessment, we could establish an assessment schedule where we assess the highest risk segment no later than the second year, the second segment no later than the third year, and the third segment no later than the fifth year.

D. Safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported.

| Leak History | |
|---|---|
| **Safety Risk Indicator Leak History (Time-dependent defects)** | |
| High | >3 Spills in last 10 years |
| Low | <3 Spills in last 10 years |
| Time-dependent defects are those that result in spills due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc. | |

| Line Size Or Volume Transported | |
|---|---|
| **Safety Risk Indicator** | **Line Size** |
| High | 18" |
| Moderate | 10"-16" nominal diameters |
| Low | 8" nominal diameter |

| Age Of Pipeline | |
|---|---|
| **Safety Risk Indicator** | **Age Pipeline Condition Dependent** |
| High | 25 years |
| Low | 25 years |
| Depends on pipeline's coating and corrosion condition, and steel quality, toughness, welding. | |

| Product Transported | | |
|---|---|---|
| **Safety Risk Indicator** | **Considerations** | **Product Examples** |
| High | (Highly volatile and flammable) | (Propane, butane, Natural Gas Liquid [NGL], ammonia) |
| | Highly toxic | (Benzene, high Hydrogen Sulfide content crude oils). |
| Medium | Flammable-flashpoint <100F | (Gasoline, JP4, low flashpointcrude oils. |
| Low | Non-flammable-flashpoint 100+ F | (Diesel, fuel oil, kerosene, JP5, most crude oils. |
| The degree of acute and chronic toxicity to humans, wildlife and aquatic life; reactivity; and, volatility, flammability, and water solubility determine the Product Indicator. Comprehensive Environmental Response, Compensation and Liability Act Reportable Quantity values may be used as an indication of chronic toxicity. National Fire Protection Association health factors may be used for rating acute hazards. | | |

E. Types of Internal Inspection Tools to Use. An operator should consider at least two types of internal inspection tools for the integrity assessment from the following list. The type of tool or tools an operator selects will depend on the results from previous internal inspection runs, information analysis and risk factors specific to pipeline segment:

1. geometry internal inspection tools for detecting changes to ovality; e.g., bends, dents, buckles or wrinkles, due to construction flaws or soil movement, or other outside force damage;

2. metal loss tools (ultrasonic and magnetic flux leakage) for determining pipe wall anomalies, e.g., wall loss due to corrosion;

3. crack detection tools for detecting cracks and crack-like features, e.g., stress corrosion cracking (SCC), fatigue cracks, narrow axial corrosion, toe cracks, hook cracks, etc.

F. Methods to Measure Performance

1. General

a. This guidance is to help an operator establish measures to evaluated the effectiveness of its integrity

management program. The performance measures required will depend on the details of each integrity management program and will be based on an understanding and analysis of the failure mechanisms or threats to integrity of each pipeline segment.

b. An operator should select a set of measurements to judge how well its program is performing. An operator's objectives for its program to ensure public safety, prevent or minimize leaks and spills and prevent property and environmental damage. A typical integrity management program will be an ongoing program and it may contain many elements. Therefore, several performance measure are likely to be needed to measure the effectiveness of an ongoing program.

2. Performance Measures. These measures show how a program to control risk on pipeline segments that could affect a high consequences area is progressing under the integrity management requirements. Performance measures generally fall into three categories.

a. Selected Activity Measures. Measures that monitor the surveillance and preventive activities the operator has implemented. These measure indicate how well an operator is implementing the various elements of its integrity management program.

b. Deterioration Measures. Operation and maintenance trends that indicate when the integrity of the system is weakening despite preventive measures. This category of performance measure may indicate that the system condition is deteriorating despite well executed preventive activities.

c. Failure Measures. Leak History, incident response, product loss, etc. These measures will indicate progress towards fewer spills and less damage.

3. Internal vs. External comparisons. These comparisons show how a pipeline segment that could affect a high consequence area is progressing in comparison to the operator's other pipeline segment that are not covered by the integrity management requirements and how that pipeline segment compares to other operator's pipeline segments.

a. Internal. Comparing data from the pipeline segment that could affect the high consequence area with data from pipeline in other areas of the system may indicate the effects from the attention given to the high consequence area.

b. External. Comparing data external to the pipeline segment (e.g., OPS incident data) may provide measures on the frequency and size of leaks in relation to other companies.

4. Examples. Some examples of performance measures an operator could use include:

a. a performance measurement goal to reduce the total volume from unintended releases by __ percent (to be determined by operator) with an ultimate goal of zero;

b. a performance measurement goal to reduce the total number of unintended releases (based on a threshold of five gallons) by __ percent (to be determined by operator) with an ultimate goal of zero;

c. a performance measurement goal to document the percentage of integrity management activities completed during the calendar year;

d. a performance measurement goal to track and evaluate the effectiveness of the operator's community outreach activities;

e. a narrative description of pipeline system integrity, including a summary of performance improvements, both qualitative and quantitative, to an operator's integrity management program prepared periodically;

f. a performance measure based on internal audits of the operator's pipeline system per LAC 33:V;

g. a performance measure based on external audits of the operator's pipeline system per LAC 33:V;

h. a performance measure based on operational events (for example: relief occurrences, unplanned valve closure, SCADA outages, etc.) that have the potential to adversely affect pipeline integrity;

i. a performance measure to demonstrate that the operator's integrity management program reduces risk over time with a focus on high risk items;

j. a performance measure to demonstrate that the operator's integrity management program for pipeline stations and terminals reduces risk over time with a focus on high risk items.

G. Examples of Types of Records an Operator Must Maintain. The rules requires an operator to maintain certain records. (See §30298.L) This Section provides examples of some records that an operator would have to maintain for inspection to comply with the requirement. This is not an exhaustive list:

1. a process for identifying which pipeline segments that could affect a high consequence area and a document identifying all pipeline segments that could affect a high consequence area;

2. a plan for baseline assessment of the line pipe that includes each required plan element;

3. modifications to the baseline plan and reasons for the modification;

4. use of and support for an alternative practice;

5. a framework addressing each required element of the integrity management program, updates and changes to the initial framework and eventual program;

6. a process for identifying a new high consequence area and incorporating it into the baseline plan, particularly, a process for identifying population changes around a pipeline segment;

7. an explanation of methods selected to assess the integrity of line pipe;

8. a process for review of integrity assessment results and data analysis by a person qualified to evaluated the results and data;

9. the process and risk factors for determining the baseline assessment interval;

10. the results of the baseline integrity assessment;

11. the process used for continual evaluation, and risk factors used for determining the frequency of evaluation.

12. process for integrating and analyzing information about the integrity of a pipeline, information and data used for the information analysis;

13. results of the information analyses and periodic evaluations;

14. the process and risk factors for establishing continual re-assessment intervals;

15. justification to support any variance from the required re-assessment intervals;

16. integrity assessment results and anomalies found, process for evaluating and repairing anomalies criteria for repair actions and actions taken to evaluate and repair the anomalies;

17. other remedial actions planned or taken;

18. schedule for reviewing and analyzing integrity assessment results;

19. schedule for evaluation and repair of anomalies, justification to support deviation from required repair times.

20. risk analysis used to identify additional preventive or mitigative measures, records of preventive and mitigative actions planned or taken.

21. criteria for determining EFRD installation;

22. criteria for evaluating and modifying leak detection capability;

23. methods used to measure the program's effectiveness.

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HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:90. (January 2002).

Philip N. Asprodites
Commissioner of Conservation

0201#018

**RULE**

**Department of Public Safety and Corrections**
**Corrections Services**

Disciplinary Rules for Adult Offenders C Penalty Schedule C Disciplinary Report (LAC 22:I.359)

In accordance with the Administrative Procedure Act, R.S. 49:953(A), the Department of Public Safety and Corrections, Corrections Services, has amended regulations dealing with the Disciplinary Rules for Adult Offenders.

**Title 22**
**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**
**Part I. Corrections**
**Chapter 3. Adult and Juvenile Services**
**Subchapter B. Disciplinary Rules for Adult Offenders**
**§ 359. Penalty Schedule C Disciplinary Report (Heard by Disciplinary Board)**

A.1. - A.2.k. …

l. loss of incentive wages for up to one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Corrections Services, LR 7:6 (January 1981), repromulgated by Corrections Services, LR 17:605 (June 1991), LR 17:670 (July 1991), amended LR 19:653 (May 1993), LR 25:1876 (October 1999), LR 28:94 (January 2002).

Richard L. Stalder
Secretary

0201#075

**RULE**

**Department of Public Safety and Corrections**
**Corrections Services**

Louisiana Risk Review Panel (LAC 22:I.107)

In accordance with the Administrative Procedure Act, R.S. 49:953.A and B, and in order to comply with the legislative mandate of Act 403 of the 2001 Regular Session of the Louisiana Legislature, the Department of Public Safety and Corrections, Corrections Services has adopted rules and regulations for the operation of the Louisiana Risk Review Panel.

**Title 22**
**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**
**Part I. Corrections**
**Chapter 1. Secretary's Office**
**§107. Louisiana Risk Review Panel**

A. Purpose. To establish the secretary's policy regarding the formation of the Louisiana Risk Review Panel pursuant to legislative intent and the provisions R.S. 15:574.22 (Act 403 of the 2001 Regular Session of the Louisiana Legislature).

B. Applicability. Deputy Secretary, Undersecretary, Assistant Secretary of the Office of Adult Services, Wardens of Adult Institutions, Director of Probation and Parole-Adult, Chairman/Board of Parole, Chairman/Board of Pardons and administrators of local jail facilities.

C. Panel Composition and Guidelines

1. The secretary hereby creates three regional Risk Review Panels to be known as the North Louisiana Panel, (supported by David Wade Correctional Center serving as the regional state facility), the Central Louisiana Panel, (supported by David Wade Correctional Center with the Work Training Facility-North serving as the regional state facility), and the South Louisiana Panel, supported by the Elayn Hunt Correctional Center as the regional state facility.) The secretary shall designate the parishes which comprise each panel and shall appoint a chairman and a Coordinator for each panel.

2. Each Risk Review Panel shall consist of five members as follows:

a. the secretary, or his designee, who shall be chairman;

b. a psychologist (either licensed or working directly under the supervision of a licensed psychologist), who shall be authorized and approved by the secretary;

c. the warden (or his deputy) at the state facility where the inmate is housed or the regional state facility warden (or his deputy) for inmates housed in local jail facilities;

d. a retired judge with criminal law experience, who shall be appointed by the governor; and

e. a probation and parole officer**C**adult with a minimum of ten years experience, who shall be appointed by the governor.

3. A majority of members present constitutes a quorum. All official actions of the panel shall require an affirmative vote of a majority of members present.

4. Each panel or panel member may work in any region. A panel shall meet on the call of the chairman or upon the request of any three members.

5. Panel members, other than departmental employees, may receive a per diem for each hearing they attend. The amount of the per diem shall be fixed by the secretary in accordance with R.S. 15:574.22(D.) All members shall receive travel reimbursement in accordance with Department Regulation Number A-03-002 "Travel" and PPM Number 49.

6. Panels shall follow the provisions of R.S. 42:1 et seq. (Public Policy for Open Meetings Law) and *Robert's Rules of Order*.

7. Official results shall be maintained on a docket sheet results form.

8. Recommendations made by individuals other than those employed by the Department of Public Safety and Corrections or the local jail facility where the inmate is housed shall be made in writing.

D. Selection Criteria

1. Pursuant to R.S. 15:574.22 G(1), (2), and (3), the following inmates are ineligible to apply for Risk Review Panel consideration:

a. an inmate convicted of a crime of violence as defined or enumerated in R.S. 14:2(13);

b. an inmate convicted of a sex offense as defined in R.S. 15:540 et seq. when the victim was under the age of 18 at the time of commission of the offense;

c. an inmate convicted of a violation of the Uniform Controlled Dangerous Substances Law except for any of the following:

i. possession as defined in R.S. 40:966(C), 967(C), 968(C), 969(C) or 970(C);

ii. distribution or possession with the intent to distribute cocaine where the offense of conviction involved less than 28 grams of cocaine;

iii. distribution or possession with the intent to distribute marijuana where the offense of conviction involved less than one pound of marijuana.

d. an inmate sentenced as a habitual offender under R.S. 15:529.1 where one or more of the crimes was a crime of violence defined or enumerated in R.S. 14:2(13).

2. Pursuant to this regulation, the following inmates are also ineligible to apply for Risk Review Panel consideration:

a. participating in or recommended for participation in the IMPACT program;

b. 180 days or less until earliest release date;

c. felony detainer(s) or open warrant(s).

d. an inmate sentenced as a habitual offender under R.S. 15:529.1 where one or more of the crimes was a sex offense as defined in R.S. 15:540 et seq.

3. An application will be ineligible for Risk Review Panel referral to the appropriate board in the following circumstances:

a. a poor disciplinary record, to include habitual and compulsive violent behavior, consistent signs of bad work habits, lack of cooperation or good faith and/or other undesirable behavior;

b. maximum custody status;

i. exception: inmates assigned to maximum custody solely based upon classification criteria and not for disciplinary reasons are eligible;

c. low level of program activity**C**inmates should demonstrate initiative, participation in self help programs and good work habits (where available);

d. extensive criminal history, to include habitual or compulsive use of violence against the person;

e. probation and parole revocation history;

f. prior history of mental illness that would lead to the conclusion that the individual is a danger to society;

g. communicable or contagious disease for which inmate has not been receptive to or is non-compliant with treatment (e.g., tuberculosis, hepatitis A, B, and C, human immunodeficiency virus (HIV) and sexually transmitted diseases);

h. found guilty of being in possession or under the influence of a controlled dangerous substance during the current term of incarceration;

i. poor restitution payment history.

E. Application Procedures

1. All requests for consideration must be submitted on the department's official Risk Review Panel Application Form.

2. State inmates in state facilities will apply to the warden at the facility in which they are housed. The application will be reviewed by appropriate staff and a recommendation concerning the inmate's statutory and technical eligibility pursuant to this regulation for Risk Review Panel review will be made. Facilities located in the geographical area of the North Louisiana and Central Louisiana Panels will forward the application with recommendation to the appropriate executive staff officer (ESO) at David Wade Correctional Center and those in the geographical area of the South Louisiana Panel will forward the application with recommendation to the ESO at Elayn Hunt Correctional Center.

3. State inmates in local jail facilities in the geographical area of the North Louisiana and Central Louisiana Panels will apply directly to the appropriate ESO at David Wade Correctional Center and those in the geographical area of the South Louisiana Panel will apply directly to the ESO at Elayn Hunt Correctional Center.

4. The ESO will then prepare a preliminary report. This will include confirmation of statutory, technical, and subjective eligibility pursuant to this regulation and a docketing recommendation. A recommendation for docketing is not necessarily a qualification or disqualification, as the Risk Review Panel may take such action as it deems appropriate regarding each application. Docketing is determined solely at the discretion of the panel. Applications which are determined to be ineligible for consideration will be returned to the inmate.

5. Applications will be recommended for docketing as follows:

a. defer docket**C**the inmate is a poor candidate for consideration. A live review is not recommended. However, the panel may move the inmate from the defer docket to the hearing docket at its discretion;

b. hearing docket**C**a live review is recommended.

6. Inmates placed on the hearing docket shall participate in risk assessment utilizing an instrument determined by the department.

7. If a preliminary recommendation for referral to the appropriate board is made, then a psychological evaluation or assessment, if recommended by the panel, shall be conducted.

F. Panel Review

1. A decision relative to the location of Risk Review Panels for state inmates housed in local jail facilities will be made based upon volume:

a. if the volume is high, the Risk Review Panel may go on-site locally to conduct reviews;

b. if the volume is low, the inmate may be brought to the closest state facility or other designated site to conduct reviews.

2. The relevance of witness testimony will be determined solely at the discretion of the Risk Review Panel.

3. Panel review may be conducted either live, by file review, review of staff assessments, telephone or video conferencing, or by other conferencing methods at the discretion of the panel.

4. Panel decisions will be recorded by individual vote on a docket results sheet. The panel may recommend that the inmate be considered for clemency by the Board of Pardons or the panel may recommend that the person be considered for parole by the Board of Parole. The panel may also recommend to the appropriate board such conditions for clemency or parole as may be deemed appropriate. Any recommendation of the panel shall not be binding on either board.

5. The panel may also make recommendations for referral to programs within the department, such as IMPACT or work release.

6. The panel's decision shall be disseminated to the inmate by letter from the chairman with a copy to the appropriate warden or local jail administrator. In the event the inmate is denied a favorable recommendation, the letter will include instructions concerning the inmate's ability to reapply for consideration. Re-application frequency shall be a minimum of six months and shall be determined at the discretion of the panel.

7. Risk Review Panel recommendations are not appealable through the Administrative Remedy Procedure.

G. Other Considerations for Panel Deliberations

1. Panels shall consider any other pertinent information during deliberations. Such information may include, but shall not be limited to the following:

a. presentence reports, master prison records, medical and psychological records;

b. comments submitted by the sentencing judge, the district attorney, assistant district attorney, the Board of Parole, the Board of Pardons, the victim or victim's family or the inmate;

c. the age of the inmate (to include consideration of chronological age and length of confinement where such contributes to a reduction in danger to the public);

d. current medical condition (where such contributes to a reduction in danger to the public);

e. damage or injury occasioned by the crime committed;

f. resources available to the inmate in the event of release (job and housing, family or other support, skill level); and

g. the extent to which the sentence for the instant offense exceeded the minimum sentence in effect at the time of sentencing.

2. Registered victims shall receive a letter advising them of the purpose of the Risk Review Panel review at the time the inmate is placed on a docket.

H. The effective date of this regulation is October 10, 2001.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.22 (as enacted by Act Number 403 of the 2001 Regular Session of the Louisiana Legislature).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 28:94 (January 2002).

Richard L. Stalder
Secretary

0201#076

**RULE**

**Department of Public Safety and Corrections**
**Board of Private Security Examiners**

Company Licensure (LAC 46:LIX.201 and 203)

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 has amended the Louisiana State Board of Private Security Examiners Regulations, LAC 46:LIX:201 and 203, 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.8. ...

F. It shall be unlawful for any individual to make an application to the board as qualifying agent unless that person intends to maintain and continues to maintain that supervisory position on a regular, full-time basis, or on a part-time basis if requested in writing by the applicant and approved by the board. A person may not be a qualifying agent for more than one licensee.

G. - L.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 13:752 (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).

**§203. Application Procedure**

A. - A.9. ...

10. general liability insurance:

a. the general liability policy as required by R.S. 37:3276 shall name the state of Louisiana as an additional insured and, at a minimum, shall contain coverage provisions for hiring, training and retention; errors and omissions; firearms; care, custody and control, with minimum limits equal to those set forth in R.S. 37:3276 for general liability coverage and with contractual liability exclusive of sole negligence. The policy shall not void coverage for all insureds based upon the exclusion of one insured;

b. a copy of the entire policy shall be submitted to the board upon issuance or renewal of the policy;

c. investigators acting on behalf of the Louisiana State Board of Private Security Examiners shall be empowered to investigate and report on the financial health of insurance companies authorized to issue such policies in Louisiana;

d. all companies issuing policies as required by R.S. 37:3276 shall certify policy compliance with the provisions of this chapter;

A.11. - L. ...

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 15:12 (January 1989), LR 15:847 (October 1989), LR 26:1070 (May 2000), LR 28:97 (January 2002).

Wayne R. Rogillio
Executive Secretary

0201#079

## RULE

## Department of Revenue
## Policy Services Division

Corporation Franchise Tax Due Date
(LAC 61:I.309)

Under the authority of R.S. 47:609 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.309 to conform the regulation to the current statute.

This regulation was last amended in February 1985. Two significant changes have been made to the statute since the regulation was last amended. The date upon which the corporation franchise tax is payable, which is set forth in R.S. 47:609, was changed by Acts 1986, No. 59, §1. The statute was further amended by Acts 1991, No. 368, §1 in which the term "accrual" or "accrues" was changed to "due date" or "is due." This amendment reflects the changes in the statute made in 1986 and 1991.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 3. Corporation Franchise Tax**

**§309. Due Date, Payment, and Reporting of Tax**

A. The corporation franchise tax becomes due on the first day of each calendar or fiscal year in which a corporation is subject to the tax, and is based on its entire issued and outstanding capital stock, surplus, and undivided profits, and borrowed capital determined as of the close of the previous calendar or fiscal year. There is no proration of the tax for a portion of the year in the case of dissolution of a domestic corporation, withdrawal from the state by a foreign corporation, or where a corporation otherwise ceases to be subject to the tax. The tax is payable to the secretary of Revenue on or before the fifteenth day of the third month following the month in which the tax becomes due; in the case of a calendar year taxpayer, the tax becomes due on January 1 and is payable to the secretary on or before April 15. If the day on which the tax is payable falls on a Saturday, Sunday, or legal holiday the tax is payable on the next business day. For purposes of this section, fiscal or calendar year shall be determined by reference to the annual accounting period regularly used by the corporation in keeping its books.

B. Payment of the tax shall be accompanied by a full, accurate, and complete report prepared on forms furnished by the secretary of Revenue, which shall be signed by a duly authorized official of the corporation.

C. Whenever the secretary has granted permission to a corporation to change its accounting period under the provisions of R.S. 47:613, the tax to be paid for the period from the end of the last period for which the tax had already become due until the end of the new accounting period shall be determined by multiplying the ratio that the number of such months bears to 12, times the tax computed for an annual period based on the previous period's closing. All subsequent returns shall be prepared on the basis of the new accounting period.

D. - H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:609 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), amended by the Department of Revenue, Policy Services Division, LR 28:97 (January 2002).

Cynthia Bridges
Secretary

0201#023

**RULE**

**Department of Revenue**
**Policy Services Division**

Income Tax Schedule Requirements for Certain Nonresident Professional Athletes and Professional Sports Franchises (LAC 61:I.1305)

Under the authority of R.S. 39:99, R.S. 47:295, and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:I.1305 relative to the attribution of Louisiana individual income tax from nonresident professional athletes and professional sports franchises to the Sports Facility Assistance Fund.

Act 1203 of the 2001 Regular Session of the Louisiana Legislature enacted R.S. 39:99, which creates a fund in the state treasury called the Sports Facility Assistance Fund (the Fund). Each year, the treasurer must pay into the Fund an amount equal to the income tax collected by the state from nonresident professional athletes and professional sports franchises on income earned in Louisiana. The monies in the Fund are appropriated dollar-for-dollar to the owners of the facilities at which the money that generated the income tax was earned. The purpose of this regulation is to enable the Department of Revenue to accurately attribute the income tax collected from nonresident professional athletes and professional sports franchises to the Fund.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 13. Income: Individuals**
**§1305. Income Tax Schedule Requirement for Certain Nonresident Professional Athletes and Professional Sports Franchises**

A. If the Louisiana income tax of a nonresident professional athlete or professional sports franchise is attributable to the Sports Facility Assistance Fund, created by R.S. 39:99, the following schedule must be attached to any income tax return filed, including individual, corporate, fiduciary, trust, or composite income tax returns. Each nonresident professional athlete and professional sports franchise with Louisiana source income must attach a schedule to the required Louisiana income tax return, including a team composite return, that includes the following information:

1. the name of each facility, course, stadium, or arena at which they earned income in Louisiana;
2. the location of each facility, course, stadium, or arena at which they earned income in Louisiana; and
3. the number of duty days, as defined in LAC 61:I.1304.I, spent at each facility, course, stadium, or arena at which they earned income in Louisiana.

B. For purposes of this section only, these terms are defined as follows.

*Professional Athlete*—means an athlete that either plays for a professional sports franchise or who is a member of a professional sports association or league.

*Professional Sports Franchise*—means a member team of a professional sports association or league.

*Professional Sports Association or League*—means any of the following:

a. Professional Golfers Association of America;
b. National Football League;
c. National Basketball Association;
d. National Hockey League;
e. East Coast Hockey League;
f. Pacific Coast League.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:99, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 28:98 (January 2002).

Cynthia Bridges
Secretary

0201#022

**RULE**

**Department of Revenue**
**Policy Services Division**

Nonresident Apportionment of Compensation from Personal Services Rendered (LAC 61:I.1304)

Under the authority of R.S. 47:290, R.S. 47:293, R.S. 47:295, and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:I.1304 relative to the collection of Louisiana individual income tax from nonresidents who perform personal services in Louisiana, including nonresident professional athletes and entertainers.

Under Subsection 47:290.B of the Louisiana Revised Statutes, nonresident individuals who have income earned within or derived from Louisiana sources are taxed on their Louisiana income. Compensation for personal services rendered within Louisiana is income earned within or derived from Louisiana sources. Nonresident professional athletes and entertainers who perform in Louisiana are among the nonresident service providers who are taxed on their Louisiana income. House Concurrent Resolution 208 of the 2001 Regular Session of the Louisiana Legislature urged and requested the Department of Revenue to take all actions that are reasonable and necessary to collect all income taxes owed to the state by nonresident professional athletes.

The purpose of this Rule is to apportion to the state, in a fair and equitable manner, the income of certain nonresident personal service providers who render services in this state. This Rule includes guidance that will enable nonresident professional athletes, who are members of a professional athletic team, to fairly apportion to Louisiana their compensation for services rendered as a member of a professional athletic team that was earned in this state. In addition, the Rule will provide for an optional team composite return and composite payment to allow professional athletic teams to report Louisiana individual income tax on behalf of all nonresident team members.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 13. Income: Individuals**
**§1304. Nonresident Apportionment of Compensation from Personal Services Rendered in Louisiana**

A. For purposes of this Section, nonresident means any individual not domiciled, residing in, or having a permanent place of abode in Louisiana.

B. Nonresidents are taxed on all income from sources within Louisiana. Income from sources within Louisiana includes compensation for personal services rendered within Louisiana.

C. The purpose of this Rule is to apportion to Louisiana, in a fair and equitable manner, a nonresident's total compensation for personal services performed in the state. It is presumed that application of the provisions of this Rule will result in a fair and equitable apportionment of that compensation.

1. When the department demonstrates that the method provided under this Rule does not fairly and equitably apportion that compensation, the department may require the nonresident service provider to apportion that compensation under an alternative method the department prescribes, as long as the prescribed method results in a fair and equitable apportionment.

2. If a nonresident service provider demonstrates that the method provided under this Rule does not fairly and equitably apportion compensation, the nonresident may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully documented and explained in the nonresident service provider's nonresident personal income tax return for the state.

3. Nonresident service providers shall keep adequate records to substantiate their determination or to permit a determination by the department of the part of their adjusted gross income that was derived from or connected with sources in this state.

D. Compensation of Salaried Employees with a Constant Rate of Pay. The Louisiana income from personal services is the proportion of total compensation from services rendered, which the total number of working days in the state bears to the total number of working days both within and without the state.

1. The total number of working days is determined by subtracting all nonworking days from the total number of days in the year or contract period, if the contract period is less than a year.

2. Nonworking days include, but are not limited to, Saturdays and Sundays not worked, holidays, days off for religious observance, days of absence due to illness or personal injury, vacation days, days of leave without pay, days off for any personal reason, and sabbatical days.

3. Days spent in travel, if the travel is at the direction of the employer, are considered working days even if the travel is on a day that would usually be considered a nonworking day.

E. Compensation Based on Volume of Business. The Louisiana income from commissions earned by a nonresident traveling salesman, agent or other employee for services performed or sales made, whose compensation depends directly on the volume of business transacted by him, includes that proportion of the compensation received which the volume of business transacted by such employee within Louisiana bears to the total volume of business transacted by him within and without the state.

F. Compensation from Continuous Employment in Louisiana for Part of the Year. If a nonresident employee (including officers of corporations, but excluding employees, mentioned in Subsection D above) is employed continuously in this state for a definite portion of any taxable year, that employee's Louisiana income includes the total compensation for the period employed in this state.

G. Compensation from Transportation Services. If a nonresident employee is employed in this state at intervals throughout the year, as would be the case if employed in operating trains, boats, planes, motor buses, trucks, etc., between this state and other states and foreign countries, and is paid on an hourly, daily, weekly or monthly basis, that employee's Louisiana income includes that portion of the total compensation for personal services which the total number of working days, as defined in Subsection C above, employed within the state bears to the total number of working days both within and without the state. If the employee is paid on a mileage basis, that employee's Louisiana income includes that portion of the total compensation for personal services which the number of miles traversed in Louisiana bears to the total number of miles traversed within and without the state. If the employee is paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Louisiana that portion of the total compensation which is reasonably attributable to personal services performed in this state. This subsection is not intended to attribute to Louisiana any income that is exempted from state taxation by federal law.

H. Compensation of Nonresident Entertainers and Athletes Who are not Members of a Professional Athletic Team. Compensation earned by a nonresident entertainer is considered earned where the services are performed, regardless of where the nonresident entertainer lives, enters into the contract, or receives payment. Entertainers include, but are not limited to, actors, singers, musicians, performers, and professional athletes who are not members of a professional athletic team.

1. Entertainers must include the gross amount received for performances in this state in their Louisiana income.

2. Ordinary and necessary business expenses directly attributable to the income earned in Louisiana and a pro-rata share of indirect business expenses not directly attributable to income from any particular source are "adjustments to income." These "adjustments to income" are subtracted from Louisiana income to arrive at "total Louisiana income."

I. Nonresident Athletes who are Members of a Professional Athletic Team

1. The Louisiana income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days

spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

2. Definitions. These terms are defined as follows. Unless otherwise indicated, these definitions apply only to this subsection.

*Duty Days*—all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

i. Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in the general definition of duty days above, for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

ii. Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

iii. Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

iv. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

v. Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

vi. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

*Member of a Professional Athletic Team*—shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

*Professional Athletic Team*—includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

*Total Compensation*—includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

i. Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

ii. For purposes of this Rule, "bonuses" subject to the allocation procedures described in this Subsection, are:

(a). bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(b). bonuses paid for signing a contract, unless all of the following conditions are met:

(i). the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(ii). the signing bonus is payable separately from the salary and any other compensation; and

(iii). the signing bonus is nonrefundable.

*Total Compensation for Services Rendered as a Member of a Professional Athletic Team*—the total compensation received during the taxable year for services rendered:

i. from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

ii. during the taxable year on a date that does not fall within the period in Clause i. above, for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

J. Optional team composite return for professional athletic teams. Professional athletic teams may file a composite return, on a form prescribed by the secretary, on behalf of its nonresident professional athletes.

1. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

a. name;

b. address;

c. social security number;

d. Louisiana income attributable to that nonresident professional athlete.

3. Nonresidents who are members of a professional athletic team who have any other Louisiana source income may be included in the composite return, however, inclusion in the composite return does not relieve these team members of the responsibility of filing any other required Louisiana tax return. If the other Louisiana source income is properly reportable on a Louisiana income tax return, that return must include the income from compensation as a member of a professional athletic team. Any amount paid with the team composite return on a nonresident professional athlete's behalf may be used as a credit against that team member's Louisiana individual income tax liability for the same tax period.

4. Nonresidents who are included in a properly filed and accurate team composite return, and who have no Louisiana income other than compensation for services rendered as a member of a professional athletic team, will be

deemed to have filed a Louisiana individual income tax return. Except that any underpayment by the team with the team composite return shall be the personal responsibility of the members of the professional athletic team included in the composite return.

5. The tax due on the composite return shall be computed using either of the following methods:

a. the sum of the actual tax liability from total compensation for services rendered as a member of a professional athletic team for each member of the team included in the composite return;

b. alternative method of computing the tax due on the composite return;

i. add the Louisiana income attributable to all nonresident professional athletes included in the composite return;

ii. subtract a deduction equal to 30 percent of the Louisiana income attributable to all nonresident professional athletes included in the composite return. This deduction is allowed in place of the combined standard deduction and personal exemption, excess itemized deductions, and federal tax deduction for the same period;

iii. the tax shall be computed using the maximum individual tax rate applied to Louisiana income after the 30-percent deduction.

6. Each professional athletic team will be issued an identification number by the department upon the filing of its first composite return. This identification number shall be used on all subsequent composite returns filed by that team.

7. A team making a composite return and payment must furnish the following information to all team members included in the composite return:

a. the team's taxpayer identification number;

b. the amount of the payment made on the team member's behalf;

c. a statement that the amount paid on the team member's behalf can be used as a credit against that team member's Louisiana individual income tax liability for the same tax period, if the team member files an individual return with the Department of Revenue that declares the income from compensation as a member of a professional athletic team;

d. the mailing address of the Louisiana Department of Revenue; and

e. the internet address of the Louisiana Department of Revenue.

K. Nothing in this regulation shall restrict the Secretary's authority to otherwise provide for efficient administration of the individual income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:290, R.S. 47:293, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Service Division LR 28:99 (January 2002).

Cynthia Bridges
Secretary

0201#021

**RULE**

**Department of Revenue**
**Policy Services Division**

Nonresident Net Operating Losses
(LAC 61.I.1302)

Under the authority of R.S. 47:293, R.S. 47:295, and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:I.1302 relative to nonresident individuals and Louisiana net operating losses.

The purpose of this regulation is to inform all taxpayers that nonresident individuals are allowed to carry back and carry over their Louisiana net operating losses. This regulation also provides guidance to taxpayers about the procedures for carrying these losses.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 13. Income: Individuals**
**§1302. Nonresident Net Operating Losses**

A. Nonresident individuals may carry back or carry over Louisiana net operating losses. Louisiana net operating losses may be carried and used in the same manner that would be allowed for federal purposes if the nonresident individual's federal returns consisted of only the Louisiana items of income and loss.

B. Application

1. The years to which Louisiana net operating losses may be carried are the same as they are for federal personal income tax purposes.

2. Net operating loss carrybacks and carryovers are considered an adjustment to Louisiana income and must be applied against total Louisiana income before applying any deductions.

3. When a net operating loss carryback or carryover is used a schedule must be attached to the return in which it is used for each carryback or carryover showing:

a. the taxable year in which each loss that is being carried back or carried over occurred; and

b. the amount of each loss applied to each taxable year to which it was carried over or carried back.

4. A separate schedule showing how each Louisiana net operating loss was determined may also be required.

C. Limitations

1. A Louisiana net operating loss carryback or carryover cannot include any amount that has already been deducted for Louisiana purposes.

2. Nothing in this section authorizes a federal income tax deduction for income that did not bear Louisiana personal income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:101 (January 2002).

Cynthia Bridges
Secretary

0201#020

**RULE**

**Department of Social Services**
**Office of Community Services**

Child Protection Investigation Report Acceptance
(LAC 67:V.1301)

The Department of Social Services, Office of Community Services, amends the following Rule relative to "Child Protection Investigation Report Acceptance."

This Rule regards the receipt of reports of abuse/neglect in family day care homes by the Office of Community Services. Reports received and with no allegations of culpability in the abuse/neglect by parents or legal custodians will be assigned a level of risk based on the information provided by the reporter and referred to law enforcement and, when appropriate to the case circumstances, to other agencies.

**Title 67**
**SOCIAL SERVICES**
**Part V. Office of Community Services**
**Subpart 3. Child Protective Services**
**Chapter 13. Intake**
**§1301. Child Protection Investigation Report Acceptance**

A. - B. …

C. Response Time. The reports classified as presenting low risk of immediate substantial harm alleged will be assigned a response time of from 24 hours up to 5 calendar days from the date the report was received.

D. - G. …

H. Reports of abuse/neglect in family day care homes with no allegations of culpability in the abuse/neglect by parents or legal custodians will be assigned a level of risk based on the information provided by the reporter and referred to law enforcement and, when appropriate to the case circumstances, other agencies.

AUTHORITY NOTE: Promulgated in accordance with Articles 610 and 612 G. of the Louisiana Children's Code and R.S. 46:1441.6.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 17:387 (April 1991), amended LR 18:1246 (November 1992), repromulgated LR 19:165 (February 1993), LR 19:503 (April 1993), amended LR 25:1654 (September 1999), LR 28:102 (January 2002).

Gwendolyn P. Hamilton
Secretary

0201#067

**RULE**

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

Family Independence Work Program
(FIND Work)**C**Support Services
Transportation (LAC 67:III.2913)

The Department of Social Services, Office of Family Support, has amended LAC 67:III.2913.

Pursuant to Act 12 of the 2001 Regular Session of the Louisiana Legislature and in order to further the goals and intentions of the federal Temporary Assistance for Needy Families Block Grant to promote job preparation and to better facilitate entry into the workplace, the agency has increased the amount allowed for transportation services from $60 to $120 per month for participants who are or become ineligible for cash assistance due to earned income. This change was effected by Emergency Rule October 1, 2001.

**Title 67**
**SOCIAL SERVICES**
**Part III. Office of Family Support**
**Subpart 5. Family Independence Work Program (FIND Work)**
**Chapter 29. Organization**
**Subchapter C. Activities and Services**
**§2913. Support Services**

A.1. - 2.a. ...

b. Effective October 1, 2001, participants who are or become ineligible for cash assistance due to earned income shall be eligible for a transportation payment of $120 per month beginning with the first month of FITAP ineligibility and continuing through the twelfth month of ineligibility or through the last month of employment, whichever comes first.

3.a. - c. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:309 (March 1991), amended LR 17:388 (April 1991), LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:504 (April 1993), LR 20:793 (July 1994), LR 23:451 (April 1997), LR 24:356 (February 1998), LR 24:1135 (June 1998), LR 25:526 (March 1999), LR 25:2456 (December 1999), LR 26:1343 (June 2000), LR 28:102 (January 2002).

Gwendolyn P. Hamilton
Secretary

0201#065

**RULE**

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

FITAP/KCSP/TANF Initiatives**C**Energy Assistance
(LAC 67:III.1290, 5390, and 5503)

The Department of Social Services, Office of Family Support, has amended the *Louisiana Administrative Code*, Title 67, Part III, Subpart 2, Family Independence Temporary Assistance Program (FITAP), and Subpart 13, Kinship Care Subsidy Program (KCSP), and has adopted Subpart 15, Temporary Assistance to Needy Families (TANF) Initiatives.

In order to offset the rising costs of home energy which may be excessive in relation to the income of FITAP and KCSP households, the agency made energy assistance available to these households in August 2001 through an Emergency Rule. Additional funding for energy assistance is also made possible by Act 12 of the 2001 Regular Session of the Louisiana Legislature.

**Title 67**
**SOCIAL SERVICES**
**Part III. Office of Family Support**
**Subpart 2. Family Independence Temporary Assistance Program (FITAP)**
**Chapter 12. Application, Eligibility, and Furnishing Assistance**
**Subchapter D. Special Initiatives**
**§1290. Energy Assistance**

A. Based on the availability of funding and a determination of need by OFS, all households receiving a FITAP grant may also be eligible to receive an energy assistance grant effective August 20, 2001, to apply towards the cost of utility service. OFS will establish a specific date of eligibility in order to determine when households will receive a grant, and only those households certified as of that date will be eligible for energy assistance.

B. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:103 (January 2002).

**Subpart 13. Kinship Care Subsidy Program (KCSP)**
**Chapter 53. Application, Eligibility, and Furnishing Assistance**
**Subchapter D. Special Initiatives**
**§5390. Energy Assistance**

A. Based on the availability of funding and a determination of need by OFS, all households receiving a KCSP grant may also be eligible to receive an energy assistance grant effective August 2001 to apply towards the cost of utility service. OFS will establish a specific date of eligibility in order to determine when households will receive a grant, and only those households certified as of that date will be eligible for energy assistance.

B. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:103 (January 2002).

**Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives**
**Chapter 55. TANF Initiatives**
**§5503. Emergency Energy Assistance**

A. Effective September 28, 2001, in the event of an agency-declared energy emergency based on the availability of funding and a determination of need by OFS, needy families may receive a grant to apply toward the cost of utility service.

B. Services meet the TANF goal of providing assistance to needy families so that children may be properly cared for in their own homes or in the homes of relatives by providing funds to help pay the costs of cooling and heating the homes.

C. A needy family is defined as a family in which any member receives Food Stamp benefits, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch. However, any of the preceding eligibles also receiving FITAP or KCSP grants are not eligible.

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

E. The payment process will be administered by an outside entity through a contractual agreement. Recipients will be required to provide verification of identity and eligibility as defined for a "needy family" as well as proof of residency at the utility service address. The energy assistance payment will be paid directly to the recipient's utility company or provider.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:103 (January 2002).

Gwendolyn P. Hamilton
Secretary

0201#064

**RULE**

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

Food Stamp Program—Semi-Annual Reporting Household
(LAC 67.III.2013 and 2015)

The Department of Social Services, Office of Family Support, has amended the *Louisiana Administrative Code*, Title 67, Part III, Subpart 3, Food Stamps.

At the agency's request, a waiver has been granted by the U.S. Department of Agriculture, Food and Nutrition Service, which allows the agency to process all interim changes reported by a semi-annual reporting household, including those that result in a decrease in food stamp benefits. The approved waiver eliminates inequities that exist in current policy and provides for a more consistent application of policy. The change was effected August 7, 2001, by a Declaration of Emergency.

In addition, the agency has repealed §2015 as the transition from quarterly reporting to semi-annual reporting will be complete when this Rule becomes final.

**Title 67**
**SOCIAL SERVICES**
**Part III. Office of Family Support**
**Subpart 3. Food Stamps**
**Chapter 19. Certification of Eligible Households**
**Subchapter S. Semi-Annual Reporting**
**§2013. Semi-Annual Reporting**

A. - G. ...

H. Effective August 7, 2001, other changes will be processed in accordance with §1999, Reduction or Termination of Benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:1633 (August 2000), LR 27:867 (June 2001), LR 28:103 (January 2002).

**§2015. Quarterly Reporting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a) and 273.3(c)(1)(ii).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:1633 (August 2000), amended LR 27:868 (June 2001), repealed LR 28:104 (January 2002).

Gwendolyn P. Hamilton
Secretary

0201#063

**RULE**

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

Black Bass—Daily Take and Size Limits (LAC 76:VII.149)

The Wildlife and Fisheries Commission has amended the following Rule on black bass (*Micropterus spp*.) harvest restrictions on Concordia Lake located east of Ferriday in Concordia Parish, Louisiana.

**Title 76**
**WILDLIFE AND FISHERIES**
**Part VII. Fish and Other Aquatic Life**
**Chapter 1. Freshwater Sports and Commercial Fishing**

**§149. Black Bass Regulations—Daily Take and Size Limits**

A. The Wildlife and Fisheries Commission establishes a statewide daily take (creel limit) of 10 fish for black bass (*Micropterus spp*.). The possession limit shall be the same as the daily take on water and twice the daily take off water.

B. In addition, the commission establishes special size and daily take regulations for black bass on the following water bodies:

1. Caney Creek Reservoir (Jackson Parish)

a. Size limit: 15-inch to 19-inch slot. A 15 to19-inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 15 inches and 19 inches, both measurements inclusive.

b. Daily take: 8 fish of which no more than 2 fish may exceed 19 inches maximum total length.*

c. Possession limit:

i. on water-same as daily take;

ii. off water-twice the daily take.

2. Black Bayou Lake (Bossier Parish), Chicot Lake (Evangeline Parish), Cross Lake (Caddo Parish), John K. Kelly-Grand Bayou Reservoir (Red River Parish), Lake Rodemacher (Rapides Parish) and Vernon Lake (Vernon Parish):

a. Size Limit: 14-inch to 17-inch slot. A 14- to 17-inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 14 inches and 17 inches, both measurements inclusive.

b. Daily Take: eight fish of which no more than four fish may exceed 17 inches maximum total length.*

c. Possession limit:

i. on water-same as daily take;

ii. off water-twice the daily take.

3. False River (Pointe Coupee Parish)

a. Size limit: 14-inch minimum size limit.

b. Daily Take: 5 fish.

c. Possession limit:

i. on water-Same as daily take;

ii. off water-twice the daily take.

*Maximum total length-the distance in a straight line from the tip of the snout to the most posterior point of the depressed caudal fin as measured with mouth closed on a flat surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 (25)(a), R.S. 56:325(C), R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 14:364 (June 1988), amended LR 17:278 (March 1991), repromulgated LR 17:488 (May 1991), amended LR 17:1122 (November 1991), LR 20:796 (July 1994), LR 23:1168 (September 1997), LR 24:505 (March 1998), LR 26:97 (January 2000), LR 28:104 (January 2002).

Thomas M. Gattle, Jr.
Chairman

0201#030

# Notices of Intent

**NOTICE OF INTENT**

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

Restrictions on Application of Certain Pesticides
(LAC 7:XXIII.143)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, proposes to amend regulations regarding the restrictions on applications of certain pesticides and their exemption to waiver of restrictions.

The aerial applications of certain herbicides, in certain parishes, in accordance with the current regulations and labels, has 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 will hold public meetings to discuss these amendments in Cheneyville in Rapides Parish and in Opelousas in St. Landry Parish.

These rules comply with and are enabled by R.S. 3:3203 and R.S. 3:3223.

**Title 7**
**AGRICULTURE AND ANIMALS**
**Part XXIII. Pesticide**
**Chapter 1. Advisory Commission on 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 aerial application of 2,4-D or products containing 2,4-D, the aerial 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 prior to making any aerial application of 2,4-D or products containing 2,4-D in the areas listed in LAC XXIII. 143. P. 3.a.i., the aerial owner/operator must have in his\her possession and shall be a part of the record keeping requirements, a written permit from the Division of Pesticides and Environmental Programs ("DPEP").

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 Laws 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 1 and August 15 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 whatsoever by any commercial or private applicators between May 1 and August 15 in the areas listed in LAC XXIII.143.P.a.i., except upon written application to and the specific written authorization by the Assistant Commissioner of Agricultural and Environmental Services, 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, approval shall be obtained in writing from the Louisiana Department of Agriculture and Forestry ("LDAF"). Such approval is good for two days from the date issued. Approval shall be obtained by growers or aerial applicators from the DPEP.

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 aerial owner\operators shall apply to the DPEP, on forms prescribed by the Commissioner, all request for aerial applications of 2,4-D or products containing 2,4-D.

b. Aerial owner\operators 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 9:169 (April 1983), amended LR 10:193 (March 1984), LR 11:219 (March

1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 19:791 (September 1993), LR 21:668 (July 1993), LR 21:668 (July 1995), LR 28:

**Family Impact Statement**

The proposed amendments to rules XXIII.§143 regarding applications of certain pesticides in certain parishes 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.

A public hearing will be held at the Louisiana Department of Agriculture and Forestry on February 28, 2002 at 9:30 a.m. in the auditorium. Interested persons may attend or you may submit written comments on the proposed rules to Bobby Simoneaux through the close of business on February 28, 2002 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding these rules is necessary.

Bob Odom
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Restrictions on Application of Certain Pesticides**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no estimated implementation costs or savings to the state or local governmental units. The department has current regulations for the registration of aerial owner/operators aerially applying 2,4-D. These rules required the department to permit, in writing, all aerial applications of 2,4-D during prescribed times. The minimal cost of these regulations is anticipated to be offset by reducing the investigations of citizen complaints caused by 2,4-D.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is estimated to be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Estimated costs will be minimal to the directly affected persons or groups. The applications in the parishes, except for a portion of Allen parish, are currently under waiver restriction in existing regulations. There will be no applications allowed during the period of May 1 to August 1 annually. The economic benefits will be that the growers and owner/operators can expect less drift because the product should stay on the targeted area.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment.

| | |
|---|---|
| Skip Rhorer | Robert E. Hosse |
| Assistant Commissioner | General Government Section Director |
| 0201#073 | Legislative Fiscal Office |

**NOTICE OF INTENT**

**Department of Agriculture and Forestry**
**State Market Commission**

Labeling, Advertising and Displaying of Eggs
(LAC 7:V.927 and 929)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Market Commission, proposes to amend regulation regarding the extension of the shelf life of fresh eggs and the labeling of all cartons of eggs with "Safe Handling" instructions.

Section 927 is being amended due to improvements in refrigeration and egg processing, use of inline production and a reduction in the delay between the processing and stocking of eggs in retail stores, which can be as early as the next day, allows the shelf life of eggs in retail stores to be extended from 30 to 45 days.

The United States Department of Agriculture is now requiring all egg containers or cartons containing eggs that have not been specifically processed to destroy all live salmonellae prior to distribution for sale to the ultimate consumer to be printed or stamped with a "Safe Handling" instruction. The purpose of the amendment to §929 is to bring state regulations in to conformity with the federal requirements and to aid in the development of uniform egg regulations on both a federal and state level.

These rules comply with and are enabled by R.S. 3:405 and 3:412.

**Title 7**
**AGRICULTURE AND ANIMALS**
**Part V. Advertising, Marketing and Processing**
**Chapter 9. Market Commission–Poultry and Eggs**
**Subchapter A. Certification of Official State Grades of Poultry, Poultry Products and Shell Eggs**
**§927. Destination Tolerances; Additional Inspection Fees**

A. No eggs shall be sold for resale to the consumers below U.S. Grade B, nor shall any eggs be sold as fresh eggs if the eggs are over 45 days of age. Eggs 45-60 days of age after package date may be returned to the processor or sent to a breaker. Eggs older than 60 days from date of package will be destroyed on the premises in the presence of the inspector/grader.

B. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405 and 3:412.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1124 (September 1993), amended LR 23:295 (March 1997), LR 28:

**§929. Labeling, Advertising and Displaying of Eggs**

A. - H. …

I. All cartons and containers containing shell eggs that have not been specifically processed to destroy all live salmonellae prior to distribution for sale to the ultimate consumer shall contain the following statement on each such carton or container:

> "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm and cook foods containing eggs thoroughly."

AUTHORITY NOTE: Adopted in accordance with R.S. 3:405.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Market Commission, May 1969, amended by the Department of Agriculture and Forestry, Market Commission, LR 19:1123 (September 1993), amended LR 28:

**Family Impact Statement**

The proposed amendments to LAC 7:V.927 and 929 regarding the extension of the shelf life of fresh eggs and the labeling of all cartons of eggs with "Safe Handling" instructions 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.

A public hearing will be held at the Louisiana Department of Agriculture and Forestry on February 27, 2002 at 9:30 a.m. in the auditorium. Interested persons may attend or you may submit written comments on the proposed rules to Wesley Young through the close of business on February 27, 2002 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding these rules is necessary.

Bob Odom
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Labeling, Advertising and Displaying of Eggs**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to the state or local governmental units. §927 is being amended because improvements in refrigeration and egg processing, use of inline production and a reduction in the delay between the processing and stocking of eggs in retail stores, which can be as early as the next day, allows the shelf life of eggs in retail stores to be extended from 30 to 45 days.

The United States Department of Agriculture is now requiring all egg containers or cartons containing eggs that have not been specifically processed to destroy all live salmonellae prior to distribution for sale to the ultimate consumer to be printed or stamped with a "Safe Handling" instruction. The purpose of the amendment to §929 is to bring state regulations in to conformity with the federal requirements and to aid in the development of uniform egg regulations on both a federal and state level.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no costs to the directly affected persons or groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment.

| | |
|---|---|
| Skip Rhorer | Robert E. Hosse |
| Assistant Commissioner | General Government Section Director |
| 0201#074 | Legislative Fiscal Office |

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—Policy for Louisiana's Public Education Accountability System (LAC 28:I. 901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR l:483 (November 1975). 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. The proposed changes more clearly explain and refine the existing policy as follows: 1) Indicators of District Accountability, 2) Performance Labels to be assigned, and 3) District Accountability reports to be published.

**Title 28**
**EDUCATION**
**Part I. Board of Elementary and Secondary Education**
**Chapter 9. Bulletins, Regulations, and State Plans**
**Subchapter A. Bulletins and Regulations**
**§ 901. School Approval Standards and Regulations**

Bulletin 741

* * *

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education LR 27:694-695 (May 2001); LR 27:695-702 (May 2001); LR 27:815-829 (June 2001), LR 28:

The Louisiana School and District Accountability System

District Accountability

Every school district shall participate in a district accountability system based on the performance of schools

as approved by the Louisiana State Board of Elementary and Secondary Education (SBESE).

Indicators for District Accountability

There shall be two statistics reported for each school district for District Accountability:

- a District Performance Score (DPS); and
- a District Responsibility Index (DRI).

District Performance Score (DPS)

A District Performance Score (DPS) shall be the average of School Performa Scores (SPS) of all schools in a district.
The DPS shall be reported as a numeric value.

District Responsibility Index (DRI)

A District Responsibility Index (DRI) shall be the weighted average of four indicators[1] with each indicator to be expressed as an index. A score of 100 = good and a score of 150 = excellent.

The proposed indicators includes:

1. Summer School;
2. The change in SPS for all schools relative to Growth Targets;
3. The change in LEAP 21 first-time passing rate from one year to the next; and
4. Certified Teachers.

[1] Indicators for school finance and graduation rate of high school students may be considered in the calculation of the District Responsibility Index at a later date.

Indicators and Weights

| Indicator | Weighting |
|---|---|
| 1. Summer School. | 30% (Part A 15% + Part B 15%) |
| 2. The change in SPS for all schools relative to Growth Targets. | 25% |
| 3. The change in LEAP 21 first-time passing rate from one year to the next. | 25% (Part A 12.5% + Part B 12.5%) |
| 4. Certified Teachers | 20% (Part A 15% + Part B 5%) |

Indicator 1: Summer School

The Louisiana Department of Education shall use two statistics when calculating an index score for summer school.

Part A: The percentage passing summer LEAP 21 tests.

The Louisiana Department of Education shall calculate the percentage passing summer LEAP 21 tests by using the number of students who scored *Unsatisfactory* in the previous spring as the denominator. The scores of first-time students shall be included (i.e., not students who are repeating the grade because of a score of *Unsatisfactory* in the previous year). This statistic shall include grades 4 and 8 and shall be weighted by the number of students failing each test in the previous spring. English language arts (ELA) and mathematics shall be counted separately. The numerator and denominator shall be the sum of counts in grade 4 ELA and mathematics plus grade 8 ELA and mathematics. Students' summer school results shall be attributed to the district in which they took the summer test.

Formula for Converting Part A to an Index: 2.5 * (percent passing + 5).

Implications of Index for Part A:

35 percent passing of summer tests shall yield an Index of 100.
55 percent passing of summer tests shall yield an Index of 150.

Part B: The change in scale scores on LEAP 21 from spring to summer for scores that are *Unsatisfactory* in the spring.

The Louisiana Department of Education shall use the mean change in scale scores on LEAP 21 from the spring to the summer administration, for all scores that were Unsatisfactory in the spring administration. The scores of first-time students shall be included (i.e. not students who are repeating the grade because of a score of *Unsatisfactory* in the previous year. If a student is tested in the spring but not in the summer, the change for that student's score shall be "0." If a student is tested in the summer but not in the spring, the spring score shall be assumed to be the 10th percentile of students tested in the spring. Four averages shall be computed for each district - ELA and mathematics for both 4th and 8th grades. The district score shall be the weighted average of the four results. Students' summer school results shall be attributed to the district in which they took the summer test.

Formula for Converting Part B to an Index: 5 * (average scale score gain).

Implications of Index Part B:

A scale score gain of 20 points shall yield an Index of 100.
A scale score gain of 30 points shall yield an Index of 150.

Indicator 2: The Change in SPS for all schools relative to Growth Targets

The Louisiana Department of Education shall compute the change in School Performance Scores (SPSs) for all schools in the district. The relative change in SPSs for all schools shall be the weighted sum of gains (weighted by the school's enrollment) divided by the weighted sum of Growth Targets.

Formula for Converting to an Index: 100 * (the relative change in SPS).

Implications of Index:

All schools meeting their Growth Targets shall yield an Index of 100.

All schools achieving 1.5 times their Growth Targets shall yield an Index of 150.

Indicator 3: The change in LEAP 21 first-time passing rate from one year to the next

The Louisiana Department of Education shall calculate the simple average of two statistics when calculating an index score for the change in LEAP 21 first-time passing rate from one year to the next. The scores of first-time test-takers shall be used for each statistic

Part A: percent passing

Formula for Converting Part A to an Index: 3.333 * (Percent passing - 50).

Implications of Index for Part A:

An 80% pass rate shall yield an Index of 100.
A 95% pass rate shall yield an Index of 150.

Part B: Improvement in percentage passing

Formula for Converting Part B to an Index: 25 * (change in passing rate + 2).

Implications of Index for Part B:

A 2% increase yields an Index of 100.
A 4% increase yields an Index of 150.

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

Indicator 4: Certified Teachers

For the purpose of District Accountability, the Louisiana Department of Education shall define certified teachers as those who hold an A, B, or C certificate or who have been certified in accordance with the 12-Hour rule and whose certification includes 100% of the classes they teach. The Louisiana Department of Education shall use two statistics when calculating an index score for certified teachers.

Part A: The percentage of certified teachers in schools below the state average[1]

The Louisiana Department of Education shall calculate this statistic by multiplying 100 times the number of teachers in the district that are certified divided by the number of teachers in the district. If no schools in the district are scoring below the state average, Part A of this indicator shall not apply and the total weight of this indicator shall be applied to Part B.

Formula for Converting Part A to an Index: 5* (percent certified – 70)
Implications of Index for Part A:
90 percent of teachers certified shall yield an Index of 100.
100 percent of teachers certified shall yield an Index of 150.

Part B: The percentage of certified teaches in the district

The Louisiana Department of Education shall calculate this statistic by multiplying 100 times the number of teachers in the district that are certified divided by the number of teachers in the district.
Formula for Converting Part A to an Index: 5* (percent certified – 70)
Implications of Index for Part A: 90 percent of teachers certified shall yield an Index of 100.
100 percent of teachers certified shall yield an Index of 150.
[1]The Louisiana Department of Education calculates two state averages: a state average for K-8 schools and a state average for 9-12 and combination schools. Combination schools are schools that contain 10th and/or 11th grade and a 4th and/or 8th grade (i.e., a school with grades 7-12)

Performance Labels

A district shall not receive a label for its District Performance Score. A label shall be reported for the District Responsibility Index (DRI) and for each of the four indicators.

| District Responsibility Index | Label |
|---|---|
| 120.0 or more | Excellent |
| 100.0 – 119.9 | Very Good |
| 80.0 – 99.9 | Good |
| 60.0 – 79.9 | Poor |
| 0.0 – 59.9 | Unsatisfactory |

Corrective Actions

The Louisiana Department of Education shall report district scores and labels on every school district. Consequences imposed on a district shall be based on its District Responsibility Index (DRI). Any district receiving a Performance Label of *Unsatisfactory* for its DRI shall become subject to an operational audit. If a district scores Unsatisfactory again within two years, the SBESE shall have the authority to act on the audit findings, including the withholding of funds to which the district might otherwise be entitled.

Progress Report

The Louisiana Department of Education shall publish a District Accountability Report. The report shall contain the labels for the DRI and for each of the four indicators. The report shall also contain the percent poverty, poverty ranking, and percentage of students enrolled in public education for the district

* * *

Interested persons may submit written comments until 4:30 p.m., March 11, 2002, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Bulletin 741C Louisiana Handbook for School AdministratorsC Policy for Louisiana's Public Education Accountability System**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs to state governmental units. The proposed changes more clearly explain and refine the existing policy as it pertains to the indicators of District Accountability, Performance Labels to be assigned, and District Accountability reports to be published.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs and/or economic benefits to persons or non-governmental groups directly affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0201#038

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Grade-Level Endorsements to Existing Certificates (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. The new certification structure provides add-on certification within the undergraduate program, but does not address grade-level endorsements to existing certificates. This Bulletin 746 policy provides conditions under which grade-level endorsements may be added to existing certificates, based on the new certification structure. This represents a new policy that will become effective in July, 2002. This action will allow Louisiana teachers to add grade-level endorsements to existing certificates, building upon initial certification areas provided through an undergraduate program of study. This will assist districts in more effective placement of teachers in areas of certification.

**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**

Bulletin 746

* * *

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 27:825-827 (June 2001); LR 27:827-828 (June 2001); LR 27:828-829 (June 2001)

**Bulletin 746—Louisiana Standards for State Certification of School Personnel—Grade-Level Endorsements to Existing Certificates**

The new certification structure contains "Additional Certifications" to be used as part of the undergraduate program for persons pursuing credentials in teacher education. The same requirements are to be used for endorsements to certificates for adjacent grade-level structures.

| BASIC CERTIFICATIONS (To which endorsements may be added) | ADD-ON CERTIFICATIONS | | TOTAL HOURS |
|---|---|---|---|
| | NEW CERTIFICATIONS (Endorsement areas that can be added to adjacent grade-level structures only) | ADDITIONAL COURSES AND HOURS | |
| GRADES PK - 3 | GRADES 1-6 | Content Emphasis:<br><br>Sciences 6 Hours<br>Social Studies 6 Hours<br>Mathematics 3 Hours | 15 Hours |
| GRADES 1-6 | GRADES PK - 3 | Content Emphasis:<br><br>Nursery School and Kindergarten 12 Hours | 12 Hours |
| GRADES 1-6 | GRADES 4-8 (Generic) | Content Emphasis:<br><br>English 3 Hours<br>Mathematics 3 Hours<br>Science 4 Hours<br>Social Studies 3 Hours | 13 Hours |
| GRADES 4-8 | GRADES 1-6 | Reading/Language Arts and Math Emphasis:<br><br>Reading/ Language Arts 9 Hours<br>Mathematics 3 Hours | 12 Hours |
| GRADES 1-6, GRADES 4-8, OR GRADES 7-12 | Mild/Moderate Special Education | Special Education Emphasis*:<br><br>Methods and Materials for Mild/Moderate Exceptional Children, Assessment and Evaluation of Exceptional Learners, Behavioral Management of Mild/Moderate Exceptional Children, and Vocational and Transition Services for Students with Disabilities 12 Hours<br><br>Practicum in Assessment and Evaluation of Mild/Moderate Exceptional Children 3 Hours<br>(Note: This should not be required if students participate in student teaching that combines regular and special education teaching experiences.) | 12 Hours<br><br>(Additional 3 Hour Practicum, if not integrated into other field-based experiences and student teaching) |

* * *

Interested persons may submit comments until 4:30 p.m., March 11, 2002, 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 746—Louisiana Standards for State Certification of School Personnel—Grade-Level Endorsements to Existing Certificates**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

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)

The new certification structure provides add-on certification within the undergraduate program but does not address grade-level endorsements to existing certificates. This Bulletin 746 policy provides conditions under which grade-level endorsements may be added to existing certificates, and the policy represents no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0201#040

H. Gordon Monk
Staff Director
Legislative Fiscal Office

## NOTICE OF INTENT

### Student Financial Assistance Commission
### Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 703, 705, 803, 805, 903, 907, 911, 1103, 1111, 1903, 2103, 2105, 2107, 2303, 2309)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., February 20, 2002, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
### RULE TITLE: Scholarship/Grant Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

These rule changes clarify the definition of academic year (high school), add the definition of skill and occupational training, delete as not applicable the eligibility requirement to have not defaulted on a student loan, provide a deadline for submission of citizenship documentation, make the TOPS Tech core curriculum consistent with that of the Board of Elementary and Secondary Education (BESE), include additional programs to qualify under certain circumstances for less than full-time enrollment and as exceptions to the initial and continuous enrollment requirements, and provide a number of technical edits.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from these rule changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Program administrators, schools and recipients will benefit from clarified and correct rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

George Badge Eldredge
General Counsel
0201#042

H. Gordon Monk
Staff Director
Legislative Fiscal Office

## NOTICE OF INTENT

### Tuition Trust Authority
### Office of Student Financial Assistance

Student Tuition and Revenue Trust (START Saving) Program (LAC 28:VI.107, 301, 303, 307, 311, and 313)

The Louisiana Tuition Trust Authority (LATTA) announces its intention to amend rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 3091-3099.2).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

This proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., February 20, 2002, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P. O. Box 91202, Baton Rouge, LA 70821-9201.

George Badge Eldredge
General Counsel

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
### RULE TITLE: Student Tuition and Revenue Trust (START Saving) Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs or savings to state or local governmental units as a result of this change. Costs associated with the growth of the program caused by the participation of legal entities has been previously budgeted. The rule expands the definition of Qualified Higher Education Expenses, revises the definition of Room and Board to capture allowable costs, makes the initial account classifications of owners permanent and provides for the participation of "Legal Entities."

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections to the Office of Student Financial Assistance is anticipated to result from the revision.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule change benefits START Savings Plan participants by offering all the benefits of Section 529 of the Internal Revenue Code.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this rule.

George Badge Eldredge
General Counsel
0201#041

H. Gordon Monk
Staff Director
Legislative Fiscal Office

## NOTICE OF INTENT

**Department of Environmental Quality**
**Office of Environmental Assessment**
**Environmental Planning Division**

Incorporation by Reference of 40 CFR 68
(LAC 33:III.5901)(AQ223*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality regulations, LAC 33:III.5901 (Log #AQ223*).

This proposed rule is identical to federal regulations found in 40 CFR part 68, July 1, 2000, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

This proposed rule incorporates by reference into LAC 33:III.5901 the corresponding federal regulations in 40 CFR part 68, July 1, 2000. In order that Louisiana can maintain equivalency with the U.S. Environmental Protection Agency (EPA) for this Part, new federal regulations, along with current federal regulations, must be updated and adopted into the LAC. This rulemaking satisfies that requirement. This incorporation by reference of 40 CFR part 68 is being done to keep Louisiana's Air Regulations current with their federal counterparts. The basis and rationale for this proposed rule are to maintain equivalency with 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 III. Air**

**Chapter 59. Chemical Accident Prevention and Minimization of Consequences**

**Subchapter A. General Provisions**

**§5901. Incorporation by Reference of Federal Regulations**

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR part 68 (July 1, 2000).

* * *

[See Prior Text in B – C.6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:**.

A public hearing will be held on February 25, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by AQ223*. Such comments must be received no later than February 25, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ223*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at http://www.deq.state.la.us/ planning/regs/index.htm.

James H. Brent, Ph.D.
Assistant Secretary

0201#044

## NOTICE OF INTENT

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

LPDES Phase II Streamlining
(LAC 33:IX.Chapter 23)( WP041*)

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.Chapter 23 (Log #WP041*).

This proposed rule is identical to federal regulations found in 65 FR 30886-30913, Number 94, May 15, 2000, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

The proposed rule will streamline the LPDES program in the state regulations in accordance with the streamlining efforts of the EPA. This rule will eliminate redundant regulatory language, provide clarification, and remove or

streamline unnecessary procedures that do not provide any environmental benefits. This rule is necessary to maintain the federal authorization of the LPDES program. The basis and rationale for this rule are to mirror the federal regulations.

This proposed rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**
**ENVIRONMENTAL QUALITY**
**Part IX. Water Quality**

**Chapter 23. The LPDES Program**
**Subchapter A. Definitions and General Program Requirements**

**§2311. Purpose and Scope**

A. Scope of the LPDES Permit Requirement

1. The LPDES program requires permits for the discharge of pollutants from any point source into waters of the state. The terms pollutant, point source, and waters of the state are defined in LAC 33:IX.2313.

2. The permit program established under LAC 33:IX.Chapter 23.Subchapters A-D also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an LPDES permit in accordance with Subsection A.1 of this Section, unless all requirements implementing Section 405(d) of the CWA applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the administrator as adequate to assure compliance with section 405 of the CWA.

3. The state administrative authority may designate any person subject to the standards for sewage sludge use and disposal as a treatment works treating domestic sewage as defined in LAC 33:IX.2313, where he or she finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA Section 405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit under LAC 33:IX.2331 within 180 days of being notified by the state administrative authority that a permit is required. The state administrative authority's decision to designate a person as a treatment works treating domestic sewage under this Paragraph shall be stated in the fact sheet or statement of basis for the permit.

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 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2313. Definitions**

A. The following definitions apply to LAC 33:IX.Chapter 23.Subchapters A-G. Terms not defined in this Section have the meaning given by the CWA.

* * *

[See Prior Text]

*Animal Feeding Operation*—a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

a. animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

b. crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

* * *

[See Prior Text]

*Aquaculture Project*—a defined managed water area that uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

* * *

[See Prior Text]

*Bypass*—the intentional diversion of waste streams from any portion of a treatment facility.

* * *

[See Prior Text]

*Concentrated Animal Feeding Operation*—an animal feeding operation that meets the criteria in LAC 33:IX.Chapter 23.Appendix B, or that the state administrative authority designates under LAC 33:IX.2335.C.

*Concentrated Aquatic Animal Production Facility*—a hatchery, fish farm, or other facility that meets the criteria in LAC 33:IX.Chapter 23.Appendix C, or that the state administrative authority designates under LAC 33:IX.2337.C.

* * *

[See Prior Text]

*Municipal Separate Storm Sewer System*—as defined at LAC 33:IX.2341.B.4 and 7.

* * *

[See Prior Text]

*Publicly Owned Treatment Works (POTW)*—a treatment works, as defined by Section 212 of the Act, that is owned by a state or municipality (as defined by Section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality, as defined in Section 502(4) of the Act, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

* * *

[See Prior Text]

*Silvicultural Point Source*—as defined at LAC 33:IX.2343.B.1.

* * *

[See Prior Text]

*Sludge-Only Facility*—any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to regulations promulgated in accordance with Section 405(d) of the CWA, and is required to obtain a permit under LAC 33:IX.2311.A.2.

* * *

[See Prior Text]

*Storm Water*—storm water runoff, snow melt runoff, and surface runoff and drainage.

*Storm Water Discharge Associated With Industrial Activity*—as defined at LAC 33:IX.2341.B.14.

* * *

[See Prior Text]

*Upset*—an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

* * *

[See Prior Text]

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 Water Pollution Control Division, LR 23:722 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2755 (December 2000), LR 28:

**§2317. Prohibitions**

* * *

[See Prior Text in A-A.9.a]

b. the existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The state administrative authority may waive the submission of information by the new source or new discharger required by this Paragraph if the state administrative authority determines that the state administrative authority already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this Paragraph is to be included in the fact sheet to the permit under LAC 33:IX.2445.

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:

**Subchapter B. Permit Application and Special LPDES Program Requirements**

**§2331. Application for a Permit**

A. Duty to Apply

1. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503, and who does not have an effective permit, except persons covered by general permits under LAC 33:IX.2345, excluded under LAC 33:IX.2315, or a user of a privately owned treatment works unless the state administrative authority requires otherwise under LAC 33:IX.2361.M, must submit a complete application to the Office of Environmental Services, Permits Division in accordance with this Section and LAC 33:IX.Chapter 23.Subchapters E-G.

* * *

[See Prior Text In A.2-G.6]

7. Effluent Characteristics

a. Information on the discharge of pollutants specified in this Subparagraph (except information on storm water discharges that is to be provided as specified in LAC 33:IX.2341). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (See LAC 33:IX.2531). When no analytical method is approved, the applicant may use any suitable method, but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the state administrative authority may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfall. The requirements in Subsection G.7.f and g of this Section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the state administrative authority may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

b. Storm Water Discharges. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under LAC 33:IX.2341.D may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the state administrative authority).

However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples, taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in LAC 33:IX.2341.C.1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in LAC 33:IX.2341 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The state administrative authority may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (See LAC 33:IX.2531), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

c. Reporting Requirements. Every applicant must report quantitative data for every outfall for the following pollutants:

i. biochemical oxygen demand ($BOD_5$);
ii. chemical oxygen demand;
iii. total organic carbon;
iv. total suspended solids;
v. ammonia (as N);
vi. temperature (both winter and summer); and
vii. pH.

d. The state administrative authority may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in Subsection G.7.c of this Section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see Appendix A of this Chapter) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

i. the organic toxic pollutants in the fractions designated in Appendix D, Table I of this Chapter for the applicant's industrial category or categories unless the applicant qualifies as a small business under Subsection G.8 of this Section. Appendix D, Table II of this Chapter lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes. [See Notes 2 and 3 of this Section.]

ii. the pollutants listed in Appendix D, Table III of this Chapter (the toxic metals, cyanide, and total phenols).

f.i. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix D, Table IV of this Chapter (certain conventional and nonconventional pollutants) are discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

ii. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Appendix D, Table II or III of this Chapter (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under Subsection G.7.e of this Section, are discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under Subsection G.8 of this Section is not required to analyze for pollutants listed in Appendix D, Table II of this Chapter (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix D, Table V of this Chapter (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

i. uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5 trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

ii. knows or has reason to believe that TCDD is or may be present in an effluent.

8. Small Business Exemption. An applicant that qualifies as a small business under one of the following

criteria is exempt from the requirements in Subsection G.7.e.i or f.i of this Section to submit quantitative data for the pollutants listed in Appendix D, Table II of this Chapter (the organic toxic pollutants):

* * *

[See Prior Text in G.8.a-O]

NOTE: At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice 40 CFR 122.21 (g)(7)(v)(A) (and the department hereby suspends LAC 33:IX.2331.G.7.e.i) and the corresponding portions of Item V-C of the NPDES (and LPDES) application Form 2C as they apply to coal mines. This revision continues that suspension.[1]

NOTE: At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice 40 CFR 122.21 (g)(7)(v)(A) (and the department hereby suspends LAC 33:IX.2331.G.7.e.i) and the corresponding portions of Item V-C of the NPDES (and LPDES) application Form 2C as they apply to:

* * *

[See Prior Text in Note 2.a-c]

This revision continues that suspension.[1]

NOTE: At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice 40 CFR 122.21 (g)(7)(v)(A) (and the department hereby suspends LAC 33:IX.2331.G.7.e.i) and the corresponding portions of Item V-C of the NPDES (and LPDES) application Form 2C as they apply to:

* * *

[See Prior Text in Note 3.a-e]

This revision continues that suspension.[1]

[1] EDITORIAL NOTE: The words "This revision" refer to the document published at 48 FR 14153, Apr. 1, 1983.

* * *

[See Prior Text in P-Q.15]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074.B.(3) and B.(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:

**§2333. Signatories to Permit Applications and Reports**

* * *

[See Prior Text in A-A.1.a]

b. the manager of one or more manufacturing, production, or operating facilities, provided: the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to ensure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and the authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

NOTE: The department does not require specific assignments or delegations of authority to responsible corporate officers identified in Subsection A.1.a of this Section. The agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the state administrative authority to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under Subsection A.1.b of this Section rather than to specific individuals.

* * *

[See Prior Text in A.2-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 by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2335. Concentrated Animal Feeding Operations**

* * *

[See Prior Text in A]

B. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

* * *

[See Prior Text in C-C.3]

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:

**§2337. Concentrated Aquatic Animal Production Facilities**

* * *

[See Prior Text in A]

B. Reserved.

* * *

[See Prior Text in C-C.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:

**§2339. Aquaculture Projects**

* * *

[See Prior Text in A]

B. Definitions

*Designated Project Area*—the portions of the waters of the state within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) that, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

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:

**§2341. Storm Water Discharges**

* * *

[See Prior Text in A-B.7.b]

c. owned or operated by a municipality other than those described in Subsection B.7.a or b of this Section and that are designated by the state administrative authority as

part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under Subsection B.7.a or b of this Section. In making this determination the state administrative authority may consider the following factors:

* * *

[See Prior Text in B.7.c.i-B.12]

13. Reserved.

* * *

[See Prior Text in B.14-C]

1. Individual Application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water that the state administrative authority is evaluating for designation (see LAC 33:IX.2443.C) under Subsection A.1.e of this Section, and are not a municipal separate storm sewer shall submit an LPDES application in accordance with the requirements of LAC 33:IX.2331 as modified and supplemented by the provisions of this Paragraph.

* * *

[See Prior Text in C.1.a –a.v.(c)]

(d). any information on the discharge required under LAC 33:IX.2331.G.7.f and g;

* * *

[See Prior Text in C.1.a.v.(e)-(f)]

vi. operators of a discharge that is composed entirely of storm water are exempt from the requirements of LAC 33:IX.2331.G.2, 3, 4, 5, and 7.c, e, and h; and

* * *

[See Prior Text in C.1.a.vii-D.1.d.iv]

(a). a grid system consisting of perpendicular north-south and east-west lines spaced one-fourth mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

* * *

[See Prior Text in D.1.d.iv.(b)-2.b]

c. Characterization Data. When quantitative data for a pollutant are required under Subsection D.2.c.i.(c) of this Section, the applicant must collect a sample of effluent in accordance with LAC 33:IX.2331.G.7 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (See LAC 33:IX.2531). When no analytical method is approved, the applicant may use any suitable method, but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

* * *

[See Prior Text in D.2.c.i-d.iii.(a)]

(b). describe a monitoring program for storm water discharges associated with the industrial facilities identified in Subsection D.2.d.iii of this Section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing LPDES permit for a facility; oil and grease, COD, pH, $BOD_5$, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under LAC 33:IX.2331.G.7.f and g.

* * *

[See Prior Text in D.2.d.iv-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:

**§2345. General Permits**

A. Coverage. The state administrative authority may issue a general permit in accordance with the following:

1. Area. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection A.2.b of this Section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

* * *

[See Prior Text in A.1.a-g]

2. Sources. The general permit may be written to regulate one or more categories or subcategories of discharges, sludge use, disposal practices, or facilities, within the area described in Subsection A.1 of this Section, where the sources within a covered subcategory of discharges are either:

a. storm water point sources; or

b. one or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:

* * *

[See Prior Text in A.2.b.i-v]

3. Water Quality-Based Limits. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed in accordance with LAC 33:IX.2361, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. Other Requirements

a. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

b. The general permit may exclude specified sources or areas from coverage.

B. Administration

1. In General. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of 40 CFR Part 124 or corresponding state regulations. Special procedures for issuance are found at 40 CFR 123.44 for states.

* * *

[See Prior Text in B.2-C.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074.B.(3) and B.(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2276 (October 2000), LR 26:2553 (November 2000), LR 28:

**Subchapter C. Permit Conditions**

**§2355. Conditions Applicable to All Permits**

The following conditions apply to all LPDES permits. Additional conditions applicable to LPDES permits are in LAC 33:IX.2357. All conditions applicable to LPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved state regulations) must be given in the permit.

* * *

[See Prior Text in A-M]

1. Definitions

*Severe Property Damage*—substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

* * *

[See Prior Text in M.2-N.4]

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 Water Pollution Control Division, LR 23:724 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2553 (November 2000), LR 28:

**§2359. Establishing Permit Conditions**

* * *

[See Prior Text in A]

B.1. For a state issued permit, an applicable requirement is a state statutory or regulatory requirement that takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any interim final regulation) that takes effect prior to the issuance of the permit. LAC 33:IX.2423 for the state and 40 CFR 124.14 for EPA (reopening of comment period) provides a means for reopening permit proceedings at the discretion of the state administrative authority when new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. For state-administered and EPA-administered programs, an applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in LAC 33:IX.2383.

* * *

[See Prior Text in B.2-C]

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:

**§2361. Establishing Limitations, Standards, and Other Permit Conditions**

A.1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under Section 301 of the CWA or new source performance standards promulgated under Section 306 of the CWA, on case-by-case effluent limitations determined under Section 402(a)(1) of the CWA, or on a combination of the three, in accordance with LAC 33:IX.2469. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 40 CFR 122.29(d) (protection period).

2. Monitoring Waivers for Certain Guideline-Listed Pollutants

a. The state administrative authority may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a LPDES permit to forego sampling of a pollutant found in LAC 33:IX.2533 if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

b. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

c. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

d. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

e. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

* * *

[See Prior Text in B.1-2]

C. Reopener Clause. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the state administrative authority shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under Section 405(d) of the CWA. The state administrative authority may promptly modify or revoke and reissue any permit containing the reopener clause required by this Subsection if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit or controls a pollutant or practice not limited in the permit.

* * *

[See Prior Text in D-D.9]

E. Technology-Based Controls for Toxic Pollutants. Limitations established under Subsection A, B, or D of this Section, to control pollutants meeting the criteria listed in

Subsection E.1 of this Section. Limitations will be established in accordance with Subsection E.2 of this Section. An explanation of the development of these limitations shall be included in the fact sheet under LAC 33:IX.2445A.2.a.i.

1. Limitations must control all toxic pollutants that the state administrative authority determines (based on information reported in a permit application under LAC 33:IX.2331.G.7 or in a notification under LAC 33:IX.2357.A.1 or on other information) are or may be discharged at a level greater than the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under LAC 33:IX.2469.C; or

* * *

[See Prior Text in E.2-J.3]

K. Best management practices (BMPs) to control or abate the discharge of pollutants when:

* * *

[See Prior Text in K.1-2]

3. numeric effluent limitations are infeasible; or

4. the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA and the LEQA.

NOTE: Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B-93-004, NTIS No. PB 94-178324, ERIC No. W498; Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R-92-005, NTIS No. PB 92-235951, ERIC No. N482; Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-001, NTIS No. PB 93-223550, ERIC No.W139; Storm Water Management for Industrial Activities; Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA No. 832/R-92-006, NTIS No. PB 92-235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-002, NTIS No. PB 94-133782, ERIC No. W492. Copies of these documents (or directions on how to obtain them) can be obtained by contacting either the Office of Water Resource Center (using the EPA document number as a reference) at (202) 260-7786 or the Educational Resources Information Center (ERIC) (using the ERIC number as a reference) at (800) 276-0462. Updates of these documents or additional BMP documents may also be available. A list of EPA BMP guidance documents is available on the Office of Waste Management Home Page at http://www.epa.gov/owm. In addition, states may have BMP guidance documents. These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory regulatory effect by virtue of their listing in this note.

* * *

[See Prior Text in L-P]

Q. Navigation. Any conditions that the secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 40 CFR 124.59.

* * *

[See Prior Text in R-R.2]

S. In addition to the conditions established under LAC 33:IX.2359.A, each LPDES permit shall include conditions meeting the requirements in Subsections A-R of this Section, when applicable.

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 23:724 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), LR 26:2764 (December 2000), LR 28:

**§2363. Calculating LPDES Permit Conditions**

* * *

[See Prior Text in A-G.5]

H. Internal Waste Streams

1. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by LAC 33:IX.2361.I shall also be applied to the internal waste streams.

* * *

[See Prior Text in H.2-I]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074.B.(3) and B.(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 28:

**Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination of Permits**

**§2383. Modification or Revocation and Reissuance of Permits**

A. When the state administrative authority receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see LAC 33:IX.2355), receives a request for modification or revocation and reissuance under LAC 33:IX.2407, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in Subsections A and B of this Section for modification or revocation and reissuance or both exist. If cause exists, the state administrative authority may modify or revoke and reissue the permit accordingly, subject to the limitations of LAC 33:IX.2407.B, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see LAC 33:IX.2407.B.2). If cause does not exist under this Section or LAC 33:IX.2385, the state administrative authority shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in LAC 33:IX.2385 for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in LAC 33:IX.Chapter 23.Subchapters E and F followed.

1. Causes for Modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use

or disposal practice) that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit.

[NOTE: Certain reconstruction activities may cause the new source provisions of 40 CFR 122.29 to be applicable.]

b. Information. The state administrative authority has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For LPDES general permits (LAC 33:IX.2345) this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger LPDES permits (LAC 33:IX.2331, 40 CFR 122.29), this cause shall include any significant information derived from effluent testing required under LAC 33:IX.2331.K.5.f or H.4.c after issuance of the permit.

c. New Regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

i for promulgation of amended standards or regulations, when:

(a). the permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the secondary treatment regulations under LAC 33:IX.Chapter 23.Subchapter S; and

(b). EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(c). a permittee requests modification in accordance with LAC 33:IX.2407 within 90 days after *Federal Register* notice of the action on which the request is based;

ii. for judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with LAC 33:IX.2407 within 90 days of judicial remand;

iii. for changes based upon modified state certifications of NPDES permits, see 40 CFR 124.55(b).

d. Compliance Schedules. The state administrative authority determines good cause exists for mo dification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an LPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also LAC 33:IX.2385 (minor modifications) and Subsection A.1.n of this Section (LPDES innovative technology).

e. When the permittee has filed a request for a variance under CWA Section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for fundamentally different factors within the time specified in LAC 33:IX.2331 or 40 CFR 125.72(a).

f. 307(a) Toxics. When required to incorporate an applicable CWA section 307(a) toxic effluent standard or prohibition (see LAC 33:IX.2361.B).

g. Reopener. When required by the reopener conditions in a permit, which are established in the permit under LAC 33:IX.2361.C (for CWA toxic effluent limitations and standards for sewage sludge use or disposal, see also LAC 33:IX.2361.B) or 2719.E (pretreatment program).

h.i. Net Limits. Upon request of a permittee who qualifies for effluent limitations on a net basis under LAC 33:IX.2363.G.

ii. When a discharger is no longer eligible for net limitations, as provided in LAC 33:IX.2363.G.1.b.

i. Pretreatment. As necessary under LAC 33:IX.2715.E (compliance schedule for development of pretreatment program).

j. Failure to Notify. Upon failure of an approved state to notify, as required by the CWA Section 402(b)(3), another state whose waters may be affected by a discharge from the approved state.

k. Non-Limited Pollutants. When the level of discharge of any pollutant that is not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under LAC 33:IX.2469.C.

l. Notification Levels. To establish a notification level as provided in LAC 33:IX.2361.F.

m. Compliance Schedules. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW that has received a grant under section 202(a)(3) of the CWA for 100 percent of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2) of the CWA. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

n. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in LAC 33:IX.2349.B when:

i. the permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and

ii. the other entity fails to implement measure(s) that satisfy the requirement(s).

o. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

p. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under Section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

q. Reserved

r. Land Application Plans. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

2. Causes for Modification or Revocation and Reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

a. cause exists for termination under LAC 33:IX.2387 or 2769, and the state administrative authority determines that modification or revocation and reissuance is appropriate;

b. the state administrative authority has received notification (as required in the permit, see LAC 33:IX.2355.L.3) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (LAC 33:IX.2381.B) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

3. Upon modification or revocation and reissuance of a permit for a privately-owned sewage treatment facility regulated by the Public Service Commission, the permittee shall comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

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 23:724 (June 1997), LR 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2283 (October 2000), LR 27:45 (January 2001), LR 28:

**§2387. Termination of Permits**

* * *

[See Prior Text in A-A.5]

B. The state administrative authority shall follow the applicable procedures in 40 CFR Part 124 or state procedures in terminating any LPDES permit under this Section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the state administrative authority may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the state administrative authority shall follow 40 CFR Part 124 or applicable state procedures for termination. Expedited permit termination procedures are not available to permittees that are subject to pending state and/or federal enforcement actions, including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.

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 Water Pollution Control Division, LR 23:725 (June 1997), amended by the Office of the Secretary, LR 25:662 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**Subchapter E. General Program Requirements**

**§2403. Definitions**

A. In addition to the definitions given in LAC 33:IX.2313 and 40 CFR 123.2 (LPDES) and 501.2 (sludge management), the definitions below apply to LAC 33:IX.Chapter 23.Subbchapters E-G.

*Administrator*—the administrator of the U.S. Environmental Protection Agency, or an authorized representative.

*Application*—the standard forms for applying for a permit, including any additions, revisions, or modifications to the forms or forms approved by EPA for use in approved states, including any approved modifications or revisions.

*Appropriate Act and Regulations*—the Clean Water Act (CWA) and applicable regulations promulgated under those statutes. In the case of an approved state program, appropriate Act and regulations includes program requirements.

*CWA*—the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act of Federal Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L 95-217 and Pub. L. 95-576; 33 U.S.C. 1251 et seq.

* * *

[See Prior Text]

*State Administrative Authority*—the chief administrative officer of any state, interstate, or tribal agency operating an approved program, or the delegated representative of the state administrative authority.

* * *

[See Prior Text in B]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074.B.(3) and B.(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2407. Modification, Revocation and Reissuance, or Termination of Permits**

* * *

[See Prior Text in A-B.3]

C.1. If the state administrative authority tentatively decides to terminate a permit under LAC 33:IX.2387.A or 2769 (for EPA-issued NPDES permits, only at the request of the permittee) or a permit under LAC 33:IX.2387.B (where the permittee objects), he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit that follows the same procedures as any draft permit prepared under LAC 33:IX.2409.

2. In the case of EPA-issued permits, a notice of intent to terminate or a complaint shall not be issued if the regional administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved state under 40 CFR 123.24(b)(1) (NPDES) or 40 CFR 501.14(b)(1) (sludge). In addition, termination of an NPDES permit for cause in accordance with LAC 33:IX.2387.B may be accomplished by providing written notice to the permittee, unless the permittee objects.

* * *

[See Prior Text in 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 23:725 (June 1997), LR 23:1524 (November 1997), amended by the Office of the Secretary, LR 25:662 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2415. Public Notice of Permit Actions and Public Comment Period**

* * *

[See Prior Text in A-D.1.f]

g. for LPDES permits only (including those for sludge-only facilities), a general description of the location of each existing or proposed discharge point, the name of the receiving water, the sludge use and disposal practice(s), the location of each sludge treatment works treating domestic sewage, and use or disposal sites known at the time of permit application. For EPA-issued NPDES permits only, if the discharge is from a new source, a statement as to whether an environmental impact statement will be or has been prepared;

* * *

[See Prior Text in D.1.h-F]

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, IR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:725 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 28:

**§2423. Reopening of the Public Comment Period**

* * *

[See Prior Text in A.1-C]

D. Public notice of any of the above actions shall be issued under LAC 33:IX.2415.

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:

**§2425. Issuance and Effective Date of Permit**

A. After the close of the public comment period under LAC 33:IX.2415 on a draft permit, the state administrative authority shall issue a final permit decision. The state administrative authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on an LPDES permit. For the purposes of this Section a final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

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:

**Subchapter F. Specific Decisionmaking Procedures Applicable to LPDES Permits**

**§2445. Fact Sheets**

A. In addition to meeting the requirements of LAC 33:IX.2413, LPDES fact sheets shall contain:

1. any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal as required by LAC 33:IX.2317 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

2.a. when the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

i. limitations to control toxic pollutants under LAC 33:IX.2361.E;

ii. limitations on internal waste streams under LAC 33:IX.2363.I;

iii. limitations on indicator pollutants under LAC 33:IX.2469.G;

iv. limitations set on a case-by-case basis under LAC 33:IX.2469.C.2 or 3, or in accordance with Section 405(d)(4) of the CWA;

v. limitations to meet the criteria for permit issuance under LAC 33:IX.2317.A.9; or

vi. waivers from monitoring requirements granted under LAC 33:IX.2361.A;

b. for every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the state administrative authority's decision on regulation of users under LAC 33:IX.2361.M;

3. when appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application;

4. for EPA-issued NPDES permits, the requirements of any state certification under 40 CFR 124.53; and

5. for permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit.

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:

**Subchapter K. Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2)(A), and (E) of the Act**

**§2505. Method of Application**

A. Written request for a variance under this Subchapter shall be submitted in duplicate to the state administrative authority in accordance with LAC 33:IX.2331.L.1 and LAC 33:IX.2405.

* * *

[See Prior Text in B-B.3]

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:

**Subchapter P. Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act—Reserved**

**§2560. Effective Date**

Repealed.

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 23:199 (February 1997), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2561. Purpose and Scope**

Repealed.

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), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2563. Definition**

Repealed.

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), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2565. Applicability of Best Management Practices**

Repealed.

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), repealed by the Office of Envronmental Assessment, Environmental Planning Division, LR 28:

**§2567. Permit Terms and Conditions**

Repealed.

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), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§2569. Best Management Practices Programs**

Repealed.

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 Water Pollution Control Division, LR 23:725 (June 1997), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 28:

**Subchapter T. General Pretreatment Regulations for Existing and New Sources of Pollution**

**§2705. Definitions**

A. For purposes of this Subchapter, except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this regulation.

* * *

[See Prior Text]

*Pretreatment Requirements*—any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

*Significant Industrial User*—

* * *

[See Prior Text in A.Significant Industrial User.a-Editorial Note]

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:

**§2733. Bypass**

A. Definitions

*Severe Property Damage*—substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

* * *

[See Prior Text in B-D.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:

A public hearing will be held on February 25, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by WP041*. Such comments must be received no later than February 25, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of WP041*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-First Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104

Lococo Drive, Raceland, LA 70394 or on the Internet at http://www.deq.state.la.us/planning/regs/index.htm.

James H. Brent, Ph.D.
Assistant Secretary

0201#043

## NOTICE OF INTENT

**Department of Environmental Quality**
**Office of Environmental Assessment**
**Environmental Planning Division**

Use or Disposal of Sewage Sludge
(LAC 33:VII.301 and IX.3103-3113)(WP034)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Solid Waste regulations, LAC 33:VII.301, and adopt the Water Quality regulations, LAC 33:IX.Chapter 23.Subchapter X (Log #WP034).

The proposed rule establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included for sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land, or sewage sludge fired in a sewage sludge incinerator. Also included are pathogen and alternative vector attraction reduction requirements for sewage sludge, a material derived from sewage sludge, or domestic septage applied to the land. Siting, operation, and financial assurance requirements are included for commercial blenders, composters, and mixers of sewage sludge or a material derived from sewage sludge. The rule includes the frequency of monitoring, recordkeeping requirements, and reporting requirements for Class I sludge management facilities and requirements for the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill. The basis and rationale for this proposed rule are to establish regulations that will be in line with EPA regulations for the final use and disposal of sewage sludge. The adoption of this regulation will prepare the Department for future assumption of the Sewage Sludge Management Program. A benefit of assumption of the Sewage Sludge Management Program is that facilities will not be required to obtain both an EPA permit and a separate state permit for the use and disposal of sewage sludge. Upon assumption of the program, sewage sludge requirements will be a part of the LPDES permit or as a separate single LPDES general permit or, in the case of a sewage sludge incinerator, as a single air permit.

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. The only impact this proposed rule may have on the family, as described in R.S. 49:972, is that the family budget may be affected if a municipality or private sanitary wastewater treatment system should choose to increase its sewer user fees. However, such increases directly related to the implementation of this rule should be limited to very few facilities and would be difficult to predict.

**Title 33**
**ENVIRONMENTAL QUALITY**
**Part VII. SOLID WASTE**
**Chapter 3. Scope and Mandatory Provisions of the Program**

**§301. Wastes Governed by These Regulations**

All solid wastes as defined by the act and these regulations are subject to the provisions of these regulations, except as follows:

* * *

[See Prior Text in A - A.7]

8. infectious waste or other hospital or clinic wastes that are not processed or disposed of in solid waste processing or disposal facilities permitted under these regulations; and

9. sewage sludge and domestic septage as defined by LAC 33:IX.Chapter 23.Subchapter X of the Water Quality regulations will be exempt from all requirements of LAC 33:VII, except for the transportation requirements in LAC 33:VII.503, 529, and 705, upon the date of receipt by the department of sewage sludge program authority from EPA in accordance with 40 CFR part 503 under the NPDES program. Provisions addressing sewage sludge and domestic septage found throughout these regulations will no longer apply once the department receives program authority.

* * *

[See Prior Text in B - B.6]

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 Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2515 (November 2000), LR 28:

**Part IX. Water Quality**
**Chapter 23. The LPDES Program**
**Subchapter X. Standards for the Use or Disposal of Sewage Sludge**

**§3101. General Provisions**

A. Purpose and Applicability

1. Purpose

a. This Subchapter establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included in this Subchapter for sewage sludge, a material derived from sewage sludge, and domestic septage that is applied to the land or sewage sludge fired in a sewage sludge incinerator. Also included in this Subchapter are pathogen and alternative vector attraction reduction requirements for sewage sludge, a material derived from sewage sludge, and domestic septage applied to the land and also the siting, operation, and financial assurance requirements for commercial blenders, composters, mixers, or preparers of sewage sludge or a material derived from sewage sludge.

b. The standards in this Subchapter include the frequency of monitoring, recordkeeping requirements, and

reporting requirements for Class I sludge management facilities as defined in Subsection H of this Section.

c. This Subchapter establishes requirements for the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill.

d. In addition, this Subchapter contains specific prohibitions and restrictions regarding the use and disposal of sewage sludge.

2. Applicability

a. This Subchapter applies to:

i. any person who prepares sewage sludge or a material derived from sewage sludge;

ii. any person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land;

iii. any person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill;

iv. the owner/operator of a surface disposal site; and

v. the owner/operator of a sewage sludge incinerator.

b. This Subchapter applies to sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land or placed on a surface disposal site, to the land where the sewage sludge, a material derived from sewage sludge, or domestic septage is applied, and to a surface disposal site.

c. This Subchapter applies to sewage sludge fired in a sewage sludge incinerator, the sewage sludge incinerator, and the exit gas from a sewage sludge incinerator stack.

d. This Subchapter applies to the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill (MSWL).

B. Compliance Period

1. Except as otherwise specified in this Subchapter and in Subsection B.3 of this Section, compliance with the standards in this Subchapter shall be achieved as expeditiously as practicable, but in no case later than February 19, 1994. When compliance with the standards requires construction of new pollution control facilities, compliance with the standards shall be achieved as expeditiously as practicable, but in no case later than February 19, 1995.

2.a. The requirements for frequency of monitoring, recordkeeping, and reporting in this Subchapter for total hydrocarbons in the exit gas from a sewage sludge incinerator are effective February 19, 1994, or if compliance with the operational standard for total hydrocarbons in this Subchapter requires the construction of new pollution control facilities, February 19, 1995.

b. All other requirements for frequency of monitoring, recordkeeping, and reporting in this Subchapter are effective on July 20, 1993.

3.a. Unless otherwise specified in LAC 33:IX.3113, compliance with the requirements in LAC 33:IX.3113.B, beginning with the definition of *average daily concentration* through the definition of *wet scrubber*, 3113.D.3, 4, and 5, F.5, 6.a, 7, 8.e, and 10, and G.1.a and c shall be achieved as expeditiously as practicable, but in no case later than September 5, 2000. When new pollution control facilities must be constructed to comply with the revised requirements in LAC 33:IX.3113, compliance with the revised requirements shall be achieved as expeditiously as practicable, but no later than September 4, 2001.

b. Compliance with the requirements in Subsection E.2, 3, and 4 of this Section shall be achieved as expeditiously as practicable, but in no case later than [Insert 2 years from effective date of this rule].

c. Upon the effective date of these regulations, those persons who have received an exemption under LAC 33:VII for any form of use or disposal of sewage sludge will have 180 days to submit an application for permit coverage under these regulations.

C. Permits and Permitting Requirements

1.a. Except as exempted in Subsection C.2 of this Section, no person shall prepare sewage sludge or a material derived from sewage sludge; apply sewage sludge, a material derived from sewage sludge, or domestic septage to the land; or own or operate a sewage sludge incinerator without first obtaining a permit that authorizes such practice in accordance with the applicable requirements of this Subchapter and LAC 33:III.Chapter 5, in the case of sewage sludge incinerators.

b. The person who prepares sewage sludge or a material derived from sewage sludge and the person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land shall use the application forms indicated in LAC 33:IX.2331.A.2 and furnish the information requested in LAC 33:IX.2331.Q.

c. The owner/operator of a sewage sludge incinerator shall apply for a permit issued either under Title V of the 1990 amended Clean Air Act or other appropriate air quality permit and shall use the permit application forms indicated in LAC 33:IX.2331.A.2 and furnish the information requested in LAC 33:IX.2331.Q and LAC 33:III.Chapter 5. The permit shall be in accordance with all applicable requirements of this Subchapter and other applicable requirements of LAC 33:IX.Chapter 23.

2.a. The person who applies bagged sewage sludge or a bagged material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bagged sewage sludge or a bagged material derived from sewage sludge that is Exceptional Quality as defined in Subsection H of this Section.

b. The person who applies bulk sewage sludge or a bulk material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bulk sewage sludge or a bulk material derived from sewage sludge that was obtained from a facility with an Exceptional Quality Certification under LAC 33:IX.3103.J and that person provides proof to the state administrative authority that the bulk sewage sludge or the bulk material derived from sewage sludge was obtained from a facility with an Exceptional Quality Certification.

c. The state administrative authority may exempt any other person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land from the requirement of obtaining a permit, on a case-by-case basis, after determining that human health and the environment will not be adversely affected by the application of sewage sludge, a material derived from sewage sludge, or domestic septage to the land.

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. The Municipal Solid Waste Landfill where sewage sludge is disposed must possess a permit issued under LAC 33:VII or subtitle C of the Solid Waste Disposal Act.

2. The person who produces sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide the necessary information to the owner/operator of the landfill where the sewage sludge is to be disposed to assure that the landfill will be in compliance with its permit requirements.

3. The person who produces sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide proof to the state administrative authority that the sewage sludge is being disposed at an approved landfill by furnishing the name, address, and permit number of the landfill to the state administrative authority.

E. Prohibitions, Restrictions, and Additional or More Stringent Requirements

1.a. No person shall use or dispose of sewage sludge, a material derived from sewage sludge, or domestic septage through any practice for which requirements have not been established in this Subchapter.

b. No person shall use or dispose of sewage sludge, a material derived from sewage sludge, or domestic septage except in accordance with the requirements in this Subchapter.

2. Surface disposal, as defined in Subsection H of this Section, is prohibited as a use or disposal method of sewage sludge, of a material derived from sewage sludge, or of domestic septage.

3.a. To store, or storage of, sewage sludge, as defined in Subsection H of this Section, is allowed for a period not to exceed six consecutive months when:

i. necessary for the upgrade, repair, or maintenance of a treatment works treating domestic sewage or for agricultural storage purposes when the sewage sludge is to be used for beneficial use as defined in Subsection H of this Section;

ii. notification has been made by the person who wishes to store the sewage sludge to the state administrative authority; and

iii. subsequent approval by the state administrative authority has been received.

b.i. The state administrative authority may approve the storage of sewage sludge for commercial blenders, composters, mixers, or preparers of sewage sludge or for purposes other than those listed in Subsection E.3.a of this Section, for a period greater than six consecutive months, if the person who stores the sewage sludge demonstrates that the storage of the sewage sludge will not adversely affect human health and the environment.

ii. The demonstration shall be in the form of an official request forwarded to the state administrative authority at least 90 days prior to the storage of the sewage sludge and shall include, but is not limited to:

(a). the name and address of the person who prepared the sewage sludge;

(b). the name and address of the person who either owns the land or leases the land where the sewage sludge is to be stored, if different from the person who prepared the sewage sludge;

(c). the location, by either street address or latitude and longitude, of the land;

(d). an explanation of why the sewage sludge needs to remain on the land;

(e). an explanation of how human health and the environment will not be affected;

(f). the approximate date when the sewage sludge will be stored on the land and the approximate length of time the sewage sludge will be stored on the land; and

(g). the final use and disposal method after the storage period has expired.

iii.(a). The state administrative authority shall make a determination as to whether or not the information submitted is complete and shall issue the determination within 30 days of having received the request. If the information is deemed incomplete, the state administrative authority will issue a notice of deficiency. The commercial blender, composter, mixer or preparer of sewage sludge shall have 45 days, thereafter, to respond to the notice of deficiency.

(b). Within 30 days after deeming the information complete, the state administrative authority will then make and issue a determination to grant or deny the request for the storage of sewage sludge.

4.a. The use of ponds, lagoons, or landfarms is allowed for the treatment of sewage sludge or domestic septage, as defined in Subsection H of this Section, only after the applicable air, solid waste, hazardous waste, and water discharge permits have been applied for and granted by the state administrative authority.

b. The person who makes use of a pond, lagoon, or landfarm to treat sewage sludge or domestic septage shall provide documentation to the state administrative authority that indicates the final use or disposal method for the sewage sludge or domestic septage and shall apply for the appropriate permit for the chosen final use or disposal in accordance with this Subchapter.

5. The application of domestic septage to a residential lawn or garden is prohibited.

6.a. The blending, composting, or mixing of sewage sludge with feedstock or supplements containing any of the materials listed in Table 1 of LAC 33:IX.3101.E or whose hazardous waste codes are those other than D002 or D003 is prohibited.

b. The state administrative authority may prohibit the use of other materials as feedstock or supplements if the use of such materials has a potential to adversely affect human health or the environment, as determined by the administrative authority.

**Table 1 of LAC 33:IX.3101.E**
**Materials Prohibited from Feedstock or Supplements that are Blended, Composted, or Mixed with Sewage Sludge**

| | |
|---|---|
| Antifreeze | Pesticides |
| Automotive (lead-acid) batteries | Photographic supplies |
| Brake fluid | Propane cylinders |
| Cleaners (drain, oven, toilet) | Treated wood containing the preservatives CCA and/or PCP |
| Gasoline and gasoline cans | Tubes and buckets of adhesives, caulking, etc. |
| Herbicides | Swimming pool chemicals |
| Household (dry cell) batteries | Unmarked containers |
| Oil-based paint | Used motor oil |

7.a. The use of sewage sludge for daily cover at landfill facilities is prohibited.

b. The use of sewage sludge as interim and final cover for landfill facilities is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.3103.

8.a. On a case-by-case basis, the permitting authority may impose requirements in addition to or more stringent than the requirements in this Subchapter when necessary to protect human health and the environment from any adverse effect of a pollutant in the sewage sludge.

b. Nothing in this Subchapter precludes a local government, district, or political subdivision thereof or interstate agency from imposing additional or more stringent requirements than the requirements presented in this Subchapter.

F. Exclusions

1. Treatment Processes. This Subchapter does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in LAC 33:IX.3111.C and D.

2. Selection of a Use or Disposal Practice. This Subchapter does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is to be made by the person who prepares the sewage sludge.

3. Co-Firing of Sewage Sludge

a. Except for the co-firing of sewage sludge with auxiliary fuel, as defined in LAC 33:IX.3113.B, this Subchapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

b. This Subchapter does not establish requirements for sewage sludge co-fired with auxiliary fuel if the auxiliary fuel exceeds 30 percent of the dry weight of the sewage sludge and auxiliary fuel mixture.

4. Sludge Generated at an Industrial Facility. This Subchapter does not establish requirements for the use or disposal of sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage.

5. Hazardous Sewage Sludge. This Subchapter does not establish requirements for the use or disposal of sewage sludge or a material derived from sewage sludge that is hazardous under 40 CFR part 261 and/or LAC 33:V.

6. Sewage Sludge with High PCB Concentration. This Subchapter does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

7. Incinerator Ash. This Subchapter does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

8. Grit and Screenings. This Subchapter does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

9. Drinking Water Treatment Sludge. This Subchapter does not establish requirements for the use or disposal of sludge generated during the treatment of either surface water or groundwater used for drinking water.

10. Commercial and Industrial Septage. This Subchapter does not establish requirements for the use or disposal of commercial septage, industrial septage, a mixture of domestic septage and commercial septage, or a mixture of domestic septage and industrial septage.

11. Transporters and Haulers of Sewage Sludge or Domestic Septage. This Subchapter does not establish requirements for the transporting and hauling of sewage sludge or domestic septage. Transporters and haulers of sewage sludge or domestic septage must comply with all of the applicable requirements of LAC 33:VII pertaining to the transporting or hauling of sewage sludge or domestic septage.

G. Sampling and Analysis

1. Sampling

a. The permittee shall collect and analyze representative samples of sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land and sewage sludge fired in a sewage sludge incinerator.

b. The permittee shall create and maintain records of sampling and monitoring information that shall include:

i. the date, exact place, and time of sampling or measurements;

ii. the individual(s) who performed the sampling or measurements;

iii. the date(s) analyses were performed;

iv. the individual(s) who performed the analysis;

v. the analytical techniques or methods used; and

vi. the results of such analysis.

2. Methods. The materials listed below are incorporated by reference in this Subchapter. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the *Louisiana Register*. They are available for inspection at the Office of the Federal Register, 7th Floor, Suite 700, 800 North Capitol Street, NW, Washington, DC, and at the Office of Water Docket, Room L-102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies may be obtained from the standard producer or publisher listed in the regulation. Information regarding other sources of these documents is available from the Department of Environmental Quality, Office of Environmental Services, Permits Division. Methods in the materials listed below shall be used to analyze samples of sewage sludge.

a. Enteric Viruses. ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," 1992 Annual Book of ASTM Standards: Section 11--Water and Environmental Technology, ASTM, 1916 Race Street, Philadelphia, PA 19103-1187.

b. Fecal Coliform. Part 9221 E or Part 9222 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

c. Helminth Ova. Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal

Sludges," EPA 600/1-87-014, 1987. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 88-154273/AS).

d. Inorganic Pollutants. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987). Second Edition and Updates I and II are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB-87-120-291). Third Edition and Revision I are available from Superintendent of Documents, Government Printing Office, 941 North Capitol Street, NE, Washington, DC 20002 (Document Number 955-001-00000-1).

e. *Salmonella sp*. Bacteria. Part 9260 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or Kenner, B.A. and H.P. Clark, "Detection and Enumeration of Salmonella and Pseudomonas Aeruginosa," Journal of the Water Pollution Control Federation, Vol. 46, No. 9, September 1974, pp. 2163-2171. Water Environment Federation, 601 Wythe Street, Alexandria, VA 22314.

f. Specific Oxygen Uptake Rate. Part 2710 B, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

g. Total, Fixed, and Volatile Solids. Part 2540 G, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

h. Incineration of Sewage Sludge**C**Standards of Performance and Particulate Matter. Materials and Methods at 40 CFR part 60 as incorporated by reference at LAC 33:III.3003.

i. Incineration of Sewage Sludge – National Emission Standards for Beryllium and for Mercury. Materials, Methods, and Standards at 40 CFR part 61 as incorporated by reference at LAC 33:III.5116.

j. Composting of Sewage Sludge. "Test Methods for the Examination of Composting and Compost," The US Composting Council Research and Education Foundation and USDA, TMECC Website: http://tmecc.org/tmecc/index.html.

H. General Definitions

*Apply Sewage Sludge or Sewage Sludge Applied to the Land*—land application of sewage sludge.

*Base Flood*—a flood that has a 1 percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

*Beneficial Use*—using sewage sludge or a material derived from sewage sludge or domestic septage for the purpose of soil conditioning or crop or vegetative fertilization in a manner that does not pose adverse effects upon human health and the environment or cause any deterioration of land surfaces, soils, surface waters, or groundwater.

*Bulk Sewage Sludge*—sewage sludge that is not sold or given away in a bag or other container for application to the land.

*Class I Sludge Management Facility*—for the purpose of this Subchapter:

a. any publicly owned treatment works (POTW) or privately owned wastewater treatment device or system, regardless of ownership, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

b. the person who prepares sewage sludge or a material derived from sewage sludge, including commercial blenders, composters, mixers, or preparers;

c. the owner/operator of a sewage sludge incinerator; and

d. the person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land.

*Commercial Blender, Composter, Mixer, or Preparer of Sewage Sludge*—any person who prepares sewage sludge or a material derived from sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the person.

*Cover Crop*—a small grain crop, such as oats, wheat, or barley, not grown for harvest.

*Domestic Septage*—either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

*Domestic Sewage*— waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

*Dry Weight Basis*—calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100 percent solids content).

*Exceptional Quality*—sewage sludge or a material derived from sewage sludge that meets the ceiling concentrations in Table 1 of LAC 33:IX.3103.D, the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the pathogen requirements in LAC 33:IX.3111.C.1, one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h, and the concentration of PCBs of less than 10 mg/kg of total solids (dry weight).

*Feed Crops*—crops produced primarily for consumption by animals.

*Feedstock*—primarily biologically decomposable organic material that is blended, mixed, or composted with sewage sludge.

*Fiber Crops*—crops such as flax and cotton.

*Food Crops*—crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

*Groundwater*—water below the land surface in the saturated zone.

*Industrial Wastewater*—wastewater generated in a commercial or industrial process.

*Land Application*—the beneficial use of sewage sludge, a material derived from sewage sludge, or domestic septage by either spraying or spreading onto the land surface,

injection below the land surface, or incorporation into the soil.

*Other Container*—either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

*Permitting Authority*—either EPA or a state with an EPA-approved sludge management program.

*Person Who Prepares Sewage Sludge*—either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

*Pollutant*—an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the administrative authority, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

*Pollutant Limit*—a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

*Runoff*—rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

*Surface Disposal*—the use or disposal of sewage sludge that does not meet the criteria of *land application* as defined in this Subsection. This may include, but is not limited to, ponds, lagoons, sewage sludge only landfills (monofills), or landfarms.

*Supplements*—for the purpose of this Subchapter, materials blended, composted, or mixed with sewage sludge or other feedstock and sewage sludge in order to raise the moisture level and/or to adjust the carbon to nitrogen ratio, and materials added during composting or to compost to provide attributes required by customers for certain compost products.

*To Store, or Storage of, Sewage Sludge*—the temporary placement of sewage sludge on land.

*To Treat, or Treatment of, Sewage Sludge or Domestic Septage*—the preparation of sewage sludge or domestic septage for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

*Treatment Works*—either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§3103. Land Application**

A. Applicability

1. This Section applies to any person who prepares sewage sludge or a material derived from sewage sludge that is applied to the land; to any person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land; to sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land; and to the land on which sewage sludge, a material derived from sewage sludge, or domestic septage is applied.

2.a.i. The general requirements in Subsection C.1 of this Section, the other requirements in Subsection E.1 of this Section, the general management practices in Subsection C.2.a of this Section, and the other management practices in Subsection E.2 of this Section do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge is Exceptional Quality as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

ii. The general requirements in Subsection C.1 of this Section, the other requirements in Subsection E.1 of this Section, the general management practices in Subsection C.2.a of this Section, and the other management practices in Subsection E.2 of this Section do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material is Exceptional Quality as defined in LAC 33:IX.3101.H of this Section and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

b. The state administrative authority may apply any or all of the general requirements in Subsection C.1 of this Section, the other requirements in Subsection E.1 of this Section, the general management practices in Subsection C.2.a of this Section and the other management practices in Subsection E.2 of this Section to the bulk sewage sludge in Subsection A.2.a.i of this Section and the bulk material in Subsection A.2.a.ii of this Section on a case-by-case basis after determining that any or all of the requirements or management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the bulk sewage sludge or bulk material derived from sewage sludge to the land.

3.a.i. The general requirements in Subsection C.1 of this Section and the general management practices in Subsection C.2 of this Section do not apply if sewage sludge sold or given away in a bag or other container is Exceptional Quality as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

ii. The general requirements in Subsection C.1 of this Section and the general management practices in Subsection C.2 of this Section do not apply if a material derived from sewage sludge is sold or given away in a bag or other container and the material is Exceptional Quality as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

iii. The general requirements in Subsection C.1 of this Section and the general management practices in

Subsection C.2 of this Section do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived is Exceptional Quality as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

b. The state administrative authority may apply any or all of the general requirements in Subsection C.1 of this Section and the general management practices in Subsection C.2 of this Section to the sewage sludge in Subsection A.3.a.i of this Section or the derived material in Subsection A.3.a.ii or iii of this Section on a case-by-case basis after determining that the general requirements or the general management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the sewage sludge or derived material to the land.

B. Special Definitions

*Agricultural Land*—land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

*Agronomic Rate*—

a. the whole sludge application rate (dry weight basis) designed:

i. to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and

ii. to minimize the amount of nitrogen in the sewage sludge that is not utilized by the crop or vegetation grown on the land and either passes below the root zone to the groundwater or gets into surface waters during storm events;

b. agronomic rate may be extended to include phosphorus to application sites that are located within the drainage basin of water bodies that have been determined by the state administrative authority to be impaired by phosphorus.

*Annual Pollutant Loading Rate*—the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

*Annual Whole Sludge Application Rate*—the maximum amount of sewage sludge (dry weight basis) that can be applied to a unit area of land during a 365-day period.

*Cumulative Pollutant Loading Rate*—the maximum amount of an inorganic pollutant that can be applied to an area of land.

*Forest*—a tract of land thick with trees and underbrush.

*Monthly Average*—the arithmetic mean of all measurements taken during the month.

*Pasture*—land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

*Public Contact Site*—land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

*Range Land*—open land with indigenous vegetation.

*Reclamation Site*—drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and construction sites.

C. General Requirements and General Management Practices

1. General Requirements

a.i. When a person who prepares sewage sludge provides the sewage sludge to another person who prepares the sewage sludge, the person who receives the sewage sludge shall comply with the requirements in this Subchapter.

ii. The person who provides the sewage sludge shall provide the person who receives the sewage sludge the following information:

(a). the name, mailing address, and location of the facility or facilities of the person providing the sewage sludge;

(b). the total dry metric tons being provided per 365-day period; and

(c). a description of any treatment processes occurring at the providing facility or facilities, including blending, composting, or mixing activities and the treatment to reduce pathogens and/or vector attraction reduction.

b. No person shall apply sewage sludge, a material derived from sewage sludge, or domestic septage to the land except in accordance with the requirements in this Subchapter.

c. The person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land shall obtain information needed to comply with the requirements in this Subchapter.

d. Sewage sludge, a material derived from sewage sludge, or domestic septage shall not be applied to the land until either a determination has been made by the administrative authority that the land application site is a legitimate beneficial use site or the person who applies the sewage sludge or a material derived from sewage sludge to the land furnishes to the administrative authority written documentation from a qualified, independent third party, such as the Louisiana Cooperative Extension Service or the Louisiana Department of Agriculture, that the land application site is a legitimate beneficial use site.

2. General Management Practices

a. All Sewage Sludge, a Material Derived from Sewage Sludge, or Domestic Septage

i. All sewage sludge or a material derived from sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site only at a whole sludge application rate that is equal to or less than the agronomic rate for the sewage sludge or a material derived from sewage sludge, unless, in the case of a reclamation site, otherwise specified by the permitting authority.

ii. Sewage sludge, a material derived from sewage sludge, or domestic septage shall be applied to the land only in accordance with the requirements pertaining to slope in Table 1 of LAC 33:IX:3103.C.

iii. In addition to the restrictions addressed in Subsection C.2.a.ii of this Section, all sewage sludge, a material derived from sewage sludge, or domestic septage having a concentration of PCBs equal to or greater than 10 mg/kg of total solids (dry wt.) must be incorporated into the soil regardless of slope.

iv. When sewage sludge, a material derived from sewage sludge, or domestic septage is applied to agricultural land, forest, or a reclamation site, the following buffer zones shall be established for each application area, unless otherwise specified by the state administrative authority:

(a). private potable water supply well - 300 feet, unless special permission is granted by the private potable water supply owner;

(b). public potable water supply well, surface water intake, treatment plant, or public potable water supply elevated or ground storage tank - 300 feet, unless special permission is granted by the Department of Health & Hospitals;

(c). established school, institution, business, or occupied residential structure - 200 feet, unless special permission is granted by a qualified representative of the established school, institution, business, or occupied residential structure; and

(d). property boundary - 100 feet, unless special permission is granted by the property owner(s).

v. Sewage sludge, a material derived from sewage sludge, or domestic septage shall not be applied to agricultural land, forest, or a reclamation site if the water table is less than three feet below the zone of incorporation at the time of application.

vi. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in Subsection D.3 of this Section has been reached during that period.

b. Sewage Sludge Sold or Given Away in a Bag or Other Container

i. Sewage sludge sold or given away in a bag or other container shall not be applied to the land at a rate that would cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded.

ii. The permittee shall either affix a label to the bag or other container holding sewage sludge that is sold or given away for application to the land, or shall provide an information sheet to the person who receives sewage sludge sold or given away in a bag or other container for application to the land. The label or information sheet shall contain the following information:

(a). the name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land;

(b). a statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet;

(c). the annual whole sludge application rate for the sewage sludge that does not cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.§ 3103.D to be exceeded; and

(d). concentration of PCBs in mg/kg of total solids (dry wt.).

**Table 1 of LAC 33:IX.3103.C**
**Slope Limitations for Land Application of Sewage Sludge or Domestic Septage**

| Slope Percent | Application Restriction |
|---|---|
| 0-3 | None, except drainage to prevent standing water shall be provided. |
| 3-6 | A 100-foot vegetated runoff area should be provided at the down slope end of the application area if a liquid is applied. Measures should be taken to prevent erosion. |
| 6-12 | Liquid material must be injected into the soil. Solid material must be incorporated into the soil if the site is not covered with vegetation. A 100-foot vegetated runoff area is required at the down slope end of the application area for all applications. Measures must be taken to prevent erosion. Terracing may be required if deemed a necessity by the state administrative authority to prevent runoff from the land application site and erosion. |
| >12 | Unsuitable for application unless terraces are constructed and a 200-foot vegetated buffer area with a slope of less than 3 percent is provided at the down slope edge of the application area and the material is incorporated (solid material) and injected (liquid material) into the soil. Measures must be taken to prevent runoff from the land application site and to prevent erosion. |

D. Pollutant Limits

1. Sewage Sludge

a. Bulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of LAC 33:IX.3103.D.

b. If bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

i. the cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of LAC 33:IX.3103.D; or

ii. the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.3103.D.

c. If sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden, the concentration of each pollutant in the sewage sludge or the material derived from sewage sludge shall not exceed the ceiling concentrations in Table 1 of LAC 33:IX.3103.D and the pollutant concentrations for each pollutant listed in Table 3 of LAC 33:IX.3103.D, and the concentration of PCB must be less than 10 mg/kg of total solids (dry wt.).

d. If sewage sludge is sold or given away in a bag or other container for application to the land, either:

i. the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.3103.D; or

ii. the product of the concentration of each pollutant in the sewage sludge and the annual whole sludge application rate for the sewage sludge shall not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.3103.D to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in Appendix P of this Chapter.

2. Pollutant Concentrations and Loading Rates - Sewage Sludge

a. Ceiling Concentrations

| Table 1 of LAC 33:IX.3103.D | |
|---|---|
| **Ceiling Concentrations** | |
| **Pollutant** | **Ceiling Concentration (milligrams per kilogram)[1]** |
| Arsenic | 75 |
| Cadmium | 85 |
| Copper | 4300 |
| Lead | 840 |
| Mercury | 57 |
| Molybdenum | 75 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 7500 |
| [1]Dry weight basis | |

b. Cumulative Pollutant Loading Rates

| Table 2 of LAC 33:IX.3103.D | |
|---|---|
| **Cumulative Pollutant Loading Rates** | |
| **Pollutant** | **Cumulative Pollutant Loading Rate (kilograms per hectare)** |
| Arsenic | 41 |
| Cadmium | 39 |
| Copper | 1500 |
| Lead | 300 |
| Mercury | 17 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 2800 |

c. Pollutant Concentrations

| Table 3 of LAC 33:IX.3103.D | |
|---|---|
| **Pollutant Concentrations** | |
| **Pollutant** | **Monthly Average Concentration (milligrams per kilogram)[1]** |
| Arsenic | 41 |
| Cadmium | 39 |
| Copper | 1500 |
| Lead | 300 |
| Mercury | 17 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 2800 |
| [1]Dry weight basis | |

d. Annual Pollutant Loading Rates

| Table 4 of LAC 33:IX.3103.D | |
|---|---|
| **Annual Pollutant Loading Rates** | |
| **Pollutant** | **Annual Pollutant Loading Rate (kilograms per hectare per 365-day period)** |
| Arsenic | 2.0 |
| Cadmium | 1.9 |
| Copper | 75 |
| Lead | 15 |
| Mercury | 0.85 |
| Nickel | 21 |
| Selenium | 5.0 |
| Zinc | 140 |

3. Domestic Septage. The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using equation (1).

$$AAR = \frac{N}{0.0026} \qquad \text{Equation (1)}$$

Where:

AAR = annual application rate in gallons per acre per 365-day period.

N = amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

E. Other Requirements and Other Management Practices for Bulk Sewage Sludge

1. Other Requirements

a. The person who prepares bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk sewage sludge written notification of the concentration, on a dry weight basis, of total nitrogen, ammonia (as N), nitrates, potassium, and phosphorus in the bulk sewage sludge.

b. When a person who prepares bulk sewage sludge provides the bulk sewage sludge to a person who applies the bulk sewage sludge to the land, the person who prepares the bulk sewage sludge shall provide the person who applies the bulk sewage sludge notice and necessary information to comply with the requirements in this Subchapter.

c. The person who applies bulk sewage sludge to the land shall provide the owner or leaseholder of the land on which the bulk sewage sludge is applied notice and necessary information to comply with the requirements in this Subchapter.

d. No person shall apply bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D to the land without first contacting the state administrative authority to determine if bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D has been applied to the land since July 20, 1993.

e. No person shall apply bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D has been reached.

f. If bulk sewage sludge has not been applied to a site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of LAC 33:IX.3103.D may be applied to the site in accordance with Subsection D.1.b.i of this Section.

g. If bulk sewage sludge has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with Subsection D.1.b.i of this Section.

h. If bulk sewage sludge has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since that date is not known, an additional amount of each

pollutant shall not be applied to the site in accordance with Subsection D.1.b.i of this Section.

2. Other Management Practices

a. Bulk sewage sludge shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed under section 4 of the Endangered Species Act or its designated critical habitat.

b. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a *wetland* or other *waters of the state*, as defined in LAC 33:IX.2313, except as provided in a permit issued in accordance with section 402 or 404 of the CWA or LAC 33:IX.Chapter 23.

c. Bulk sewage sludge shall not be applied to agricultural land, forest, or a reclamation site that is 33 feet (10 meters) or less from *waters of the state*, as defined in LAC 33:IX.2313, unless otherwise specified by the permitting authority.

F. Operational Standards**C**Pathogens and Vector Attraction Reduction

1. Pathogens**C**Sewage Sludge

a. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 or the Class B pathogen requirements and site restrictions in LAC 33:IX.3111.C.2 shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

2. Pathogens - Domestic Septage. The requirements in either LAC 33:IX.3111.C.3.a or b shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

3. Vector Attraction Reduction**C**Sewage Sludge

a. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - j shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

4. Vector Attraction Reduction - Domestic Septage. The vector attraction reduction requirements in LAC 33:IX.3111.D.2.i, j, or k shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

G. Frequency of Monitoring

1. Sewage Sludge

a. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of LAC 33:IX.3103.D; the frequency of monitoring for pathogen density requirements in LAC 33:IX.3111.C.1 and 2.b; and the frequency of monitoring for vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - d and g - h shall be the frequency specified in Table 1 of LAC 33:IX.3103.G.

| Table 1 of LAC 33:IX.3103.G | |
|---|---|
| **Frequency of Monitoring – Land Application** | |
| **Amount of sewage sludge[1] (metric tons per 365-day period)** | **Frequency** |
| Greater than zero but less than 290 | Once per year |
| Equal to or greater than 290 but less than 1,500 | Once per quarter (four times per year) |
| Equal to or greater t han 1,500 but less than 15,000 | Once per 60 days (six times per year) |
| Equal to or greater than 15,000 | Once per month (12 times per year) |
| [1]Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis). | |

b. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.3103.G, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in LAC 33:IX.3111.C.1.e.ii and iii.

2. Domestic Septage. If either the pathogen requirements in LAC 33:IX.3111.C.3.b or the vector attraction reduction requirements in LAC 33:IX.3111.D.2.k are met when domestic septage is applied to agricultural land, forest, or a reclamation site, the permittee shall monitor each container of domestic septage applied to the land for compliance with those requirements.

H. Recordkeeping

1. All Class I sludge management facilities, as defined in LAC 33:IX.2313, that prepare sewage sludge shall keep a record of the annual production of sewage sludge (i.e. dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. Sewage Sludge

a. The recordkeeping requirements for the person who prepares the sewage sludge or a material derived from sewage sludge that is land applied and meets the criteria in Subsection A.2.a or 3.a of this Section are those indicated in Subsection J.5.a of this Section.

b. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1, and the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.3103.D;

(b). a description of how the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 are met; and

(c). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 was prepared under my direction and supervision in accordance with the

system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Subsection C.2.a.i - v of this Section and the other management practices in Subsection E.2 of this Section are met for each site on which bulk sewage sludge is applied;

(b). a description of how the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j are met for each site on which bulk sewage sludge is applied; and

(c). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i - v, the other management practices in LAC 33:IX.3103.E.2 and the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

c. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the Class B pathogen requirements in LAC 33:IX.3111.C.2, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h for the person who prepares the bulk sewage sludge, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i or j for the person who applies the bulk sewage sludge to the land:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.3103.D;

(b). a description of how the Class B pathogen requirements in LAC 33:IX.3111.C.2 are met;

(c). a description of how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h is met; and

(d). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in LAC 33:IX.3111.C.2 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Subsection C.2.a.i - v of this Section and the other management practices in Subsection E.2 of this Section are met for each land site on which bulk sewage sludge is applied;

(b). a description of how the site restrictions in LAC 33:IX.3111.C.2.e are met for each land site on which bulk sewage sludge is applied;

(c). a description of how the vector attraction reduction requirement in either LAC 33:IX.3111.D.2.i or j is met;

(d). the date bulk sewage sludge is applied to each site; and

(e). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i - v, the other management practices in LAC 33:IX.3103.E.2, the site restrictions in LAC 33:IX.3111.C.2.e, and the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared for each site on which bulk sewage sludge is applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

d. For bulk sewage sludge applied to the land that is agricultural land, forest, a public contact site, or a reclamation site whose cumulative loading rate for each pollutant does not exceed the cumulative pollutant loading rate for each pollutant in Table 2 of LAC 33:IX.3103.D and that meets the Exceptional Quality or Class B pathogen requirements in LAC 33:IX.3111.C, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h for the person who prepares the bulk sewage sludge, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i or j for the person who applies the bulk sewage sludge to the land:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 1 of LAC 33:IX.3103.D in the bulk sewage sludge;

(b). a description of how the Exceptional Quality or Class B pathogen requirements in LAC 33:IX.3111.C are met;

(c). how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h is met; and

(d). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either LAC 33:IX.3111.C.1 or 2] and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified

personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information, retain the information in Subsection H.2.d.ii.(a) - (g) of this Section indefinitely, and retain the information in Subsection H.2.d.ii.(h) - (m) of this Section for five years:

(a). the location, by either street address or latitude and longitude, of each land site on which bulk sewage sludge is applied;

(b). the number of hectares or acres in each site on which bulk sewage sludge is applied;

(c). the date bulk sewage sludge is applied to each land site;

(d). the cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of LAC 33:IX.3103.D in the bulk sewage sludge applied to each land site, including the amount in Subsection E.1.g of this Section;

(e). the amount of sewage sludge (i.e., tons or metric tons) applied to each land site;

(f). a description of how the information was obtained in order to comply with Subsection E.1 of this Section;

(g). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in LAC 33:IX.3103.E.1 was prepared for each land site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(h). a description of how the general management practices in Subsection C.2.a.i - v of this Section and the other management practices in Subsection E.2 of this Section are met for each land site on which bulk sewage sludge is applied;

(i). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i - v and the other management practices in LAC 33:IX.3103.E.2 was prepared for each land site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(j). a description of how the site restrictions in LAC 33:IX.3111.C.2.e are met for each land site on which Class B bulk sewage sludge is applied;

(k). the following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in LAC 33:IX.3111.C.2: "I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in LAC 33:IX.3111.C.2.e for each land site on which Class B sewage sludge was applied was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(l). if the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j are met, a description of how the requirements are met; and

(m). the following certification statement when the vector attraction reduction requirement in either LAC 33:IX.3111.D.2.i or j is met: "I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

e. for sewage sludge sold or given away in a bag or other container for application to the land meeting the requirement at Subsection D.1.d.ii of this Section, the Exceptional Quality pathogen requirements at LAC 33:IX.3111.C, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h:

i. the person who prepares the sewage sludge that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

(a). the annual whole sludge application rate for the sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded;

(b). the concentration of each pollutant listed in Table 4 of LAC 33:IX.3103.D in the sewage sludge;

(c). a description of how the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 are met;

(d). a description of how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h is met;

(e). a description of how the general management practice in Subsection C.2.b.ii of this Section was met; and

(f). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practice in LAC 33:IX.3103.C.2.b.ii, the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1, and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the sewage sludge that is given away or sold in a bag or other container to the land that is agricultural land, forest, a public contact site, or a

reclamation area shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Subsection C.2.a.i - v and b.i are met for each site on which the sewage sludge given away or sold in a bag or other container is applied; and

(b). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices 33:IX.3103.C.2.a.i - v and b.i was prepared for each site on which sewage sludge given away or sold in a bag or other container is applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment."

3. Domestic Septage. The person who applies domestic septage to agricultural land, forest, or a reclamation site shall develop the following information and shall retain the information for five years:

a. the location, by either street address or latitude and longitude, of each site on which domestic septage is applied;

b. the number of acres in each site on which domestic septage is applied;

c. the date domestic septage is applied to each site;

d. the nitrogen requirement for the crop or vegetation grown on each site during a 365-day period;

e. the rate, in gallons per acre per 365-day period, at which domestic septage is applied to each site;

f. a description of how the pathogen requirements in either LAC 33:IX.3111.C.3.a or b are met;

g. a description of how the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i, j, or k are met;

h. a description of how the general management practices at LAC 33:IX.3103.C.2.a.ii - vi are met; and

i. the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices at LAC 33:IX.3103.C.2.a.ii - vi, the pathogen requirements in [insert either LAC 33:IX.3111.C.3.a or b] and the vector attraction reduction requirements in [insert LAC 33:IX.3111.D.2.i, j, or k] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

I. Reporting

1. All Class I sludge management facilities, as defined in LAC 33:IX.2313, that prepare sewage sludge shall submit the information in Subsection H.1 of this Section to the state administrative authority on February 19 of each year.

2. Additional Reporting Requirements

a. Reporting requirements for a person who prepares the sewage sludge or a material derived from sewage sludge having an Exceptional Quality Certification are as indicated in Subsection J.5.b of this Section.

b. All other Class I sludge management facilities, as defined in LAC 33:IX.2313, except the person in Subsection H.2.d.ii of this Section who applies bulk sewage sludge to the land and the person who applies domestic septage to the land, that are required to obtain a permit under LAC 33:IX.3101.C, shall submit the information in Subsection H.2 of this Section, except the information in Subsection H.2.d.ii of this Section, for the appropriate requirements, to the state administrative authority on February 19 of each year.

c. The person referred to in Subsection H.2.d.ii of this Section who applies bulk sewage sludge to the land and is required to obtain a permit under LAC 33:IX.3101.C shall submit the information in Subsection H.2.d.ii of this Section to the state administrative authority on February 19 of each year when 90 percent or more of any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D is reached at a land application site.

d. The person who applies domestic septage to the land shall submit the information referred to in Subsection H.3 of this Section for the appropriate requirements to the state administrative authority on February 19 of each year.

3. The state administrative authority may require any facility indicated in Subsection I.2.a of this Section to report any or all of the information required in Subsection I.2.b - d of this Section if deemed necessary for the protection of human health or the environment.

J. Exceptional Quality Certification

1.a. The person who prepares the sewage sludge or a material derived from sewage sludge who desires to receive an Exceptional Quality Certification must prepare sewage sludge that is Exceptional Quality as defined in LAC 33:IX.3101.H and shall forward to the state administrative authority an Exceptional Quality Certification Request Form having the following information:

i. the laboratory analysis of the metals in Table 3 of LAC 33:IX.3103.D;

ii. the laboratory analysis for pH, percent dry solids, percent ammonia nitrogen, percent nitrate-nitrite, percent total Kjeldahl nitrogen, percent organic nitrogen, percent phosphorus, percent potassium, and percent organic matter;

iii. the laboratory results for polychlorinated biphenyls (PCBs);

iv. the Exceptional Quality pathogen requirement in LAC 33:IX.3111.C.1 used and the results obtained;

v. the vector attraction reduction requirement in LAC 33:IX.3111.D.2.a - h used and the results obtained; and

vi. for sewage sludge or a material derived from sewage sludge that is sold or given away either in bulk or in a bag, an example of the label that will accompany the sewage sludge or material derived from sewage sludge. The label shall contain the following information:

(a). name and address of the preparer;

(b). concentration (by volume) of each metal in Table 3 of LAC 33:IX.3103.D;

(c). total nitrogen;

(d). percent ammonia (as N);

(e). percent phosphorus;

(f). pH; and

(g). concentration of PCBs in mg/kg of total solids (dry wt.).

b. Samples required to be collected in accordance with Subsection J.1.a.i – v of this Section shall be from at least four representative samplings of the sewage sludge or the material derived from sewage sludge taken at least 60 days apart within the 12 months prior to the date of the submittal of an Exceptional Quality Certification Request Form.

2. The state administrative authority shall determine whether the sewage sludge or the material derived from sewage sludge is of Exceptional Quality as defined in LAC 33:IX.3101.H, and shall determine whether to issue an Exceptional Quality Certification, within 30 days of having received a complete form having all of the information requested in Subsection J.1.a of this Section.

3. Any Exceptional Quality Certification shall have a term of not more than five years.

4.a. For the term of the Exceptional Quality Certification, the preparer of the sewage sludge or material derived from sewage sludge shall conduct continued sampling at the frequency of monitoring specified in Subsection G.1 of this Section. The samples shall be analyzed for the parameters specified in Subsection J.1.a.i-iii of this Section, and for the pathogen and vector attraction reduction requirements in Subsection J.1.a.iv and v, as required by LAC 33:IX.3111.

b. If results of the sampling indicate that the sewage sludge or the material derived from sewage sludge no longer is Exceptional Quality as defined in LAC 33:IX.3101.H, then the preparer must cease any land application of the sewage sludge as an Exceptional Quality sewage sludge.

c. If the sewage sludge that is no longer of Exceptional Quality is used or disposed, the exemption for Exceptional Quality sewage sludge no longer applies and the sewage sludge must meet all the requirements and restrictions of this Subchapter that apply to a sewage sludge that is not Exceptional Quality.

d. The sewage sludge or material derived from sewage sludge shall not be applied to the land as an Exceptional Quality sewage sludge until the sample analyses have shown that the sewage sludge or material derived from sewage sludge meets the criteria for Exceptional Quality as defined in LAC 33:IX.3101.H.

5.a. Recordkeeping. The person who prepares the sewage sludge or a material derived from sewage sludge shall develop the following information and shall retain the information for five years:

i. the results of the sample analysis required in Subsection J.4.a of this Section; and

ii. the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

b. Reporting. The person who prepares the sewage sludge or a material derived from sewage sludge shall forward the information required in Subsection J.5.a of this Section to the state administrative authority on a quarterly basis. The schedule for quarterly submission is contained in the following table.

| Schedule For Quarterly Submission | |
|---|---|
| **Monitoring Period** | **DMR Due Date** |
| January, February, March | April 28 |
| April, May, June | July 28 |
| July, August, September | October 28 |
| October, November, December | January 28 |

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§3105. Reserved**

**§3107. Siting and Operation Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge**

A. Siting

1. Location Characteristics

a. Facilities shall not be located less than 200 feet from a property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowners and occupants. A copy of the notarized affidavit waiving the 200-foot buffer zone shall be entered in the mortgage and conveyance records of the parish for the adjoining landowner's property.

b. Facilities shall not be located less than 200 feet from a residence or place of business.

c. Facilities shall not be located less than 100 feet from a private or public potable water source.

d. Facilities shall not be located less than 25 feet from a subsurface drainage pipe or drainage ditch that discharges directly to waters of the state.

e. Composting operations should not be located on airports. However, when they are located on an airport, composting operations should not be located closer than the greater of the following distances: 1,200 feet from any aircraft movement area, loading ramp, or aircraft parking space; or the distance called for by airport design requirements.

f. Facilities shall not be located less than 100 feet from a wetlands, surface waters (streams, ponds, lakes), or areas historically subject to overflow from floods.

g. Facilities shall only be located in a hydrologic section where the historic high water table is at a minimum of a three-foot depth below the surface, or the water table at the facility shall be controlled to a minimum of a three-foot depth below this zone.

h. Storage and processing of sewage sludge or any material derived from sewage sludge is prohibited within any of the buffer zones indicated in Subsection A.1.a - g of this Section.

i. Facilities located in, or within, 1,000 feet of swamps, marshes, wetlands, estuaries, wildlife-hatchery areas, habitat of endangered species, archaeological sites, historic sites, publicly owned recreation areas, and similar

critical environmental areas shall be isolated from such areas by effective barriers that eliminate probable adverse impacts from facility operations.

j. Facilities located in, or within, 1,000 feet of an aquifer recharge zone shall be designed to protect the areas from adverse impacts of operations at the facility.

k. Access to facilities by land or water transportation shall be by all-weather roads or waterways that can meet the demands of the facility and are designed to avoid, to the extent practicable, congestion, sharp turns, obstructions, or other hazards conducive to accidents; and the surface roadways shall be adequate to withstand the weight of transportation vehicles.

2. Facility Characteristics

a. Perimeter Barriers, Security, and Signs

i. All facilities must have a perimeter barrier around the facility that prevents unauthorized ingress or egress, except by willful entry.

ii. During operating hours, each facility entry point shall be continuously monitored, manned, or locked.

iii. During non-operating hours, each facility entry point shall be locked.

iv. All facilities that receive wastes from off-site sources shall post readable signs that list the types of wastes that can be received at the facility.

b. Fire Protection and Medical Care. All facilities shall have access to required fire protection and medical care, or such services shall be provided internally.

c. Receiving and Monitoring Sewage Sludge, other Feedstock, or Supplements Used

i. Each processing facility shall be equipped with a device or method to determine quantity (by wet-weight tonnage), sources (whether the sewage sludge or other feedstock or supplements to be mixed with the sewage were generated in-state or out-of-state), and types of feedstock or supplements. The facility shall also be equipped with a device or method to control entry of sewage sludge, other feedstock, or supplements coming on-site and prevent entry of unrecorded or unauthorized deliverables (i.e., hazardous, industrial, unauthorized, or unpermitted solid waste).

ii. Each processing facility shall be equipped with a central control and recordkeeping system for tabulating the information required in Subsection A.2.c.i of this Section.

3. Facility Surface Hydrology

a. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the facility to adjoining areas during a 24-hour/25-year storm event. When rainfall records are not available, the design standard shall be 12 inches of rainfall below 3l degrees north latitude and 9 inches of rainfall above 3l degrees north latitude. If the 24-hour/25-year storm event level is lower, the design standard shall be required.

b. The topography of the facility shall provide for drainage to prevent standing water and shall allow for drainage away from the facility.

c. All storm water and wastewater from a facility must conform to applicable requirements of Subchapters A-W of this Chapter.

4. Facility Geology

a. Except as provided in Subsection A.4.b of this Section, facilities shall have natural stable soils of low permeability for the area occupied by the facility, including vehicle parking and turnaround areas, that should provide a barrier to prevent any penetration of surface spills into groundwater aquifers underlying the area or to a sand or other water-bearing stratum that would provide a conduit to such aquifer.

b. A design for surfacing natural soils that do not meet the requirement in Subsection A.4.a of this Section shall be prepared under the supervision of a registered engineer, licensed in the state of Louisiana with expertise in geotechnical engineering and geohydrology. Written certification by the engineer that the surface satisfies the requirements of Subsection A.4.a of this Section shall be provided.

5. Facility Plans and Specifications: Facility plans and specifications represented and described in the permit application or permit modifications for all facilities must be prepared under the supervision of, and certified by, a registered engineer, licensed in the state of Louisiana.

6. Facility Administrative Procedures

a. Permit Modifications. Permit modifications shall be in accordance with the requirements of this Chapter.

b. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

B. Operations

1. Composters, Mixers, Blenders, and Preparers

a. Facility Operations and Maintenance Manual

i. A Facility Operations and Maintenance Manual shall be developed and forwarded with the permit application to the state administrative authority.

ii. The Facility Operations and Maintenance Manual must describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of processing operations. At a minimum, the manual shall address the following:

(a). site and project description;

(b). regulatory interfaces;

(c). process management plan;

(d). pathogen treatment plan;

(e). odor management plan;

(f). worker health and safety management plan;

(g). housekeeping and nuisance management plan;

(h). emergency preparedness plan;

(i). security, community relations, and public access plan;

(j). regulated chemicals (list and location of regulated chemicals kept on-site);

(k). recordkeeping procedures;

(l). feedstock, supplements, and process management;

(m). product distribution records;

(n). operator certification; and

(o). administration of the operations and maintenance manual.

iii. The Facility Operations and Maintenance Manual shall be keep on-site and readily available to employees and, if requested, to the state administrative authority or his/her duly authorized representative.

b. Facility Operational Standards

i. The facility must include a receiving area, mixing area, curing area, compost storage area for composting operations, drying and screening areas, and truck wash area located on surfaces capable of preventing groundwater contamination (periodic inspections of the surface shall be made to ensure that the underlying soils and the surrounding land surface are not being contaminated).

ii. All containers shall provide containment of the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge and thereby control litter and other pollution of adjoining areas.

iii. Provisions shall be made for the daily cleanup of the facility, including equipment and waste-handling areas.

iv. Treatment facilities for washdown and contaminated water shall be provided or the wastewater contained, collected, and transported off-site to an approved wastewater treatment facility.

v. Leachate Management. Leachate produced in the composting process:

(a). must be collected and disposed off-site at a permitted facility; or

(b). must be collected, treated, and discharged on-site in accordance with Subchapters A-W of this Chapter; or

(c). may be reused in the composting process as a source of moisture.

vi. Sufficient equipment shall be provided and maintained at all facilities to meet their operational needs.

vii. Odor Management

(a). The production of odor shall be minimized.

(b). Processed air and other sources of odor shall be contained and, if necessary, treated in order to remove odor before discharging to the atmosphere.

viii. Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

2. Composters Only

a. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed of in an approved solid waste facility.

b. Composted sewage sludge shall be used, sold, or disposed of at a permitted disposal facility within 36 months of completion of the composting process.

3. Facility Closure Requirements

a. Notification of Intent to Close a Facility. All permit holders shall notify the administrative authority in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

i. date of planned closure;

ii. changes, if any, requested in the approved closure plan; and

iii. closure schedule and estimated cost.

b. Closure Requirements

i. An insect and rodent inspection is required before closure. Extermination measures, if required, must be provided.

ii. All remaining sewage sludge or a material derived from sewage sludge, other feedstock, and supplements shall be removed to a permitted facility for disposal.

iii. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the requirements of Subsection B.3.c of this Section must be provided to the administrative authority.

c. Remediation/Removal Program

i. Surface liquids and sewage sludges containing free liquids shall be dewatered or removed.

ii. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been removed, and such a plan shall, at a minimum, include the following:

(a). identification (analysis) of the sewage sludge, other feedstock, and supplements that have entered the facility;

(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other feedstock, and supplements that have entered the facility in order to establish clean-closure criteria. Justification of the parameters selected shall be provided in the closure plan;

(c). sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;

(d). a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;

(e). a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;

(f). analyses to be sent to the Office of Environmental Services, Permits Division confirming that the requirements of LAC 33:IX.3107.B.3.b have been satisfied;

(g). identification of the facility to be used for the disposal of the excavated waste; and

(h). a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services, Permits Division before backfilling takes place. The administrative authority will determine whether the facility has been closed properly.

iii. If sewage sludge or a material derived from sewage sludge or other feedstock and supplements used in the blending, composting, or mixing process remains at the facility, the closure and post-closure requirements for

industrial (Type I) solid waste landfills or non-industrial landfills (Type II), as provided in LAC 33:VII, shall apply.

iv. If the permit holder demonstrates that removal of most of the sewage sludge or a material derived from sewage sludge or other feedstock and supplements to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure requirements.

(a). If levels of contamination at the time of closure meet residential standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Subsection B.3.c.iv of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subsection B.3.c.iv.(a) of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

v. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§3109. Financial Assurance Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge**

A. Financial Responsibility During Operation. Permit holders or applicants for standard permits have the following financial responsibilities while the facility is in operation.

1. Permit holders and applicants must maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of $1 million per occurrence and $1 million annual aggregate, per site, exclusive of legal-defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Management and Finance, Financial Services Division.

2. The financial responsibility may be established by any one or a combination of the following:

a. Evidence of liability insurance may consist of either a signed duplicate original of a commercial blender, composter, or mixer of sewage sludge liability endorsement, or a certificate of insurance. All liability endorsements and certificates of insurance must include:

i. a statement of coverage relative to environmental risks;

ii. a statement of all exclusions to the policy; and

iii. a certification by the insurer that the insurance afforded with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with the following Subclauses (a) – (f) are amended to conform with said subclauses:

(a). bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;

(b). the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subsection A.3, 4, or 5 of this Section;

(c). whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;

(d). cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the Office of Management and Finance, Financial Services Division;

(e). any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Management and Finance, Financial Services Division; and

(f). the insurer is admitted, authorized, or eligible to conduct insurance business in Louisiana.

b. The wording of the liability endorsement shall be identical to the wording in Document 1 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

c. The wording of the certificate of insurance shall be identical to the wording in Document 2 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

3. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the following requirements, and by submitting the letter to the administrative authority.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund agreement shall be as specified in Subsection B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:

i. agency interest number;

ii. site name;

iii. facility name;

iv. facility permit number; and

v. the amount of funds assured for liability coverage of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the Office of Management and Finance, Financial Services Division receive the notice, as evidenced by the return receipts.

e. The wording of the letter of credit shall be identical to the wording in Document 3 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

4. Financial Test

a. To meet this test, the applicant, permit holder, or parent corporation of the applicant (corporate guarantor) or permit holder must submit to the Office of Management and Finance, Financial Services Division the documents required by Subsection B of this Section demonstrating that the requirements of Subsection B of this Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the permit holder, applicant, or parent corporation (corporate guarantor). If the applicant, permit holder, or parent corporation is using the financial test to demonstrate liability coverage and closure and post-closure care, only one letter from the chief financial officer is required.

b. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Subsection A.5 of this Section.

c. The wording of the financial test shall be as specified in Subsection B.8.d of this Section.

5. Corporate Guarantee

a. A permit holder or applicant may meet the requirements of Subsection A.1 of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subsection B.8.b and d of this Section. The terms of the corporate guarantee must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial-test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection B.8 of this Section;

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial blender, composter, or mixer of sewage sludge facility or facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. if the permit holder or applicant fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

iv. the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial-test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Management and Finance, Financial Services Division, and to the permit holder or applicant, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the permit holder or applicant has done so;

v. the guarantor agrees to notify the Office of Management and Finance, Financial Services Division by certified mail of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vi. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial-test criteria or that he or she is disallowed from continuing as a guarantor of closure or post-closure care, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant unless the permit holder or applicant has done so;

vii. the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

viii. the guarantor agrees to remain bound under the guarantee for as long as the permit holder or applicant must comply with the applicable financial assurance requirements of Subsection B of this Section for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the permit holder or applicant. Such cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder, as evidenced by the return receipts;

ix. the guarantor agrees that if the permit holder or applicant fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the permit holder or applicant;

x. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder or applicant. Guarantor also

expressly waives notice of amendments or modifications of the facility permit(s);

xi. the wording of the corporate guarantee shall be as specified in Subsection B.8.i of this Section.

b. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Management and Finance, Financial Services Division that a corporate guarantee is a legally valid and enforceable obligation in that state.

6. The use of a particular financial responsibility mechanism is subject to the approval of the administrative authority.

7. Permit holders of existing facilities must submit, on or before February 20, 1995, financial responsibility documentation that complies with the requirements of this Subsection. Applicants for permits for new facilities must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other feedstock, or supplements are first received for processing.

B. Financial Responsibility for Closure and Post-Closure Care

1. Permit holders or applicants have the following financial responsibilities for closure and post-closure care.

a. Permit holders or applicants shall establish and maintain financial assurance for closure and post-closure care.

b. The applicant or permit holder shall submit to the Office of Management and Finance, Financial Services Division the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures:

i. The applicant or permit holder must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these rules. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

ii. The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these rules. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.

iii. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in accordance with Subsection B.1.b.i - ii of this Section. The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure plan. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Management and Finance, Financial Services Division within 15 days following such adjustment.

iv. For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the pay-in period. The initial pay-in period is based on the estimated life of the facility.

2. Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria:

a. Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism into which the proceeds of such mechanism could be transferred should such funds be necessary for either closure or post-closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.

b. A permit holder or applicant may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within Louisiana and are specifically identified in the mechanism.

c. The amount covered by the financial assurance mechanism(s) must equal the total of the current closure and post-closure estimates for each facility covered.

d. When all closure and post-closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanism(s).

3. Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally signed duplicate of the trust agreement to the Office of Management and Finance, Financial Services Division.

a. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

b. Trusts must be accomplished in accordance with and subject to the laws of Louisiana. The beneficiary of the trust shall be the administrative authority.

c. Trust-fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by

the permit holder or applicant upon approval of the administrative authority.

d. The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the permit holder or applicant.

e. The permit holder or applicant may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The permit holder or applicant must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Subsection B.1.b.iv of this Section.

f. If the permit holder or applicant establishes a trust fund after having used one or more of the alternate mechanisms specified in this Section, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Paragraph.

g. After the pay-in period is completed, whenever the current cost estimate changes, the permit holder must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the permit holder or applicant, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure/post-closure cost estimate or it must estimate or obtain other financial assurance as specified in this Section to cover the difference.

h. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and/or post-closure may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Management and Finance, Financial Services Division. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.

i. The wording of the trust agreement shall be identical to the wording in Document 4 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in Document 4 of Appendix R of this Chapter.

4. Surety Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Management and Finance, Financial Services Division.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subsection B.3.i of this Section.

c. The bond must guarantee that the operator will:

i. fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

ii. fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure or post-closure is issued; or

iii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after receipt by both the permit holder and the administrative authority of a notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost-estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the administrative authority. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

h. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in Document 5 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

5. Performance Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Management and Finance, Financial Services Division.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subsection B.3.i of this Section.

c. The bond must guarantee that the permit holder or applicant will:

i. perform final closure and post-closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

ii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after the date both the permit holder and the administrative authority receive notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the permit holder has failed to perform final closure and post-closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure and post-closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur before 120 days have elapsed beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

h. The wording of the performance bond shall be identical to the wording in Document 6 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

6. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Management and Finance, Financial Services Division.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund shall be as specified in Subsection B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, issuing institution, and date, and providing the following information:

i. agency interest number;
ii. site name;
iii. facility name;
iv. facility permit number; and
v. the amount of funds assured for closure and/or post closure of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and Office of Management and Finance, Financial Services Division by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority receive the notice, as evidenced by the return receipts.

e. The letter of credit must be issued in an amount at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the permit holder, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure and post-closure cost estimates upon written approval of the administrative authority.

g. Following a determination by the administrative authority that the permit holder has failed to perform final closure or post-closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.

h. The wording of the letter of credit shall be identical to the wording in Document 7 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

7. Insurance. A permit holder or applicant may satisfy the requirements of this Section by obtaining insurance that conforms to the following requirements and submitting a

certificate of such insurance to the Office of Management and Finance, Financial Services Division.

a. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess- or surplus-lines insurer in one or more states, and authorized to transact insurance business in Louisiana.

b. The insurance policy must be issued for a face amount at least equal to the current closure and post-closure cost estimates.

c. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. The insurance policy must guarantee that funds will be available to close the facility and provide post-closure care once final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.

e. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and post-closure may request reimbursement for closure or post-closure expenditures by submitting itemized bills to the Office of Management and Finance, Financial Services Division. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

f. The permit holder must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the permit holder.

g. Each policy must contain a provision allowing assignment of the policy to a successor permit holder. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.

h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the permit holder and the Office of Management and Finance, Financial Services Division. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the permit holder receive notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

i. the administrative authority deems the facility abandoned;

ii. the permit is terminated or revoked or a new permit is denied;

iii. closure and/or post-closure is ordered;

iv. the permit holder is named as debtor in a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code; or

v. the premium due is paid.

i. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the permit holder, within 60 days after the increase, must either increase the face amount to at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure and post-closure cost estimates following written approval by the administrative authority.

j. The wording of the certificate of insurance shall be identical to the wording in Document 8 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

8. Financial Test. A permit holder, applicant, or parent corporation of the permit holder or applicant, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that he or she passes a financial test as specified in this Paragraph. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in Subsection A.5 of this Section.

a. To pass this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must meet either of the following criteria:

i. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). tangible net worth of at least six times the sum of the current closure and post-closure estimates to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;

(b). tangible net worth of at least $10 million; and

(c). assets in the United States amounting to either at least 90 percent of his total assets, or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

ii. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). a current rating for his most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

(b). tangible net worth of at least $10 million; and

(c). assets in the United States amounting to either 90 percent of his total assets or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

b. To demonstrate that he or she meets this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must submit the following three items to

the Office of Management and Finance, Financial Services Division:

i. a letter signed by the chief financial officer of the permit holder, applicant, or parent corporation demonstrating and certifying the criteria in Subsection B.8.a of this Section and including the information required by Subsection B.8.d of this Section. If the financial test is provided to demonstrate both assurance for closure and/or post-closure care and liability coverage, a single letter to cover both forms of financial responsibility is required;

ii. a copy of the independent certified public accountant (CPA)'s report on the financial statements of the permit holder, applicant, or parent corporation of the permit holder or applicant for the latest completed fiscal year; and

iii. a special report from the independent CPA to the permit holder, applicant, or parent corporation of the permit holder or applicant stating that:

(a). the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and

(b). in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

c. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor), permit holder, or applicant. The permit holder, applicant, or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

d. The permit holder, applicant, or parent corporation (if a corporate guarantor) of the permit holder or applicant shall provide to the Office of Management and Finance, Financial Services Division a letter from the chief financial officer, the wording of which shall be identical to the wording in Document 9 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall certify the following information:

i. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

ii. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant, for which financial assurance for the closure or post-closure care is demonstrated through the use of a financial test or self-insurance by the permit holder or applicant, including the cost estimates for the closure and post-closure care of each facility;

iii. a list of the commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure and/or post-closure is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure or post-closure care for each facility and the amount of annual aggregate liability coverage for each facility; and

iv. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for closure or post-closure care is not demonstrated through the financial test, self-insurance, or other substantially equivalent state mechanisms, including the estimated cost of closure and post-closure of such facilities.

e. For the purposes of this Subsection the phrase "tangible net worth" shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.

f. The phrase "current closure and post-closure cost estimates," as used in Subsection B.8.a of this Section, includes the cost estimates required to be shown in Subsection B.8.a.i.(a) of this Section.

g. After initial submission of the items specified in Subsection B.8.b of this Section, the permit holder, applicant, or parent corporation of the permit holder or applicant must send updated information to the Office of Management and Finance, Financial Services Division within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Subsection B.8.b of this Section.

h. The administrative authority may, on the basis of a reasonable belief that the permit holder, applicant, or parent corporation of the permit holder or applicant may no longer meet the requirements of Subsection B.8 of this Section, require reports of financial condition at any time in addition to those specified in Subsection B.8.b of this Section. If the administrative authority finds, on the basis of such reports or other information, that the permit holder, applicant, or parent corporation of the permit holder or applicant no longer meets the requirements of Subsection B.8.b of this Section, the permit holder or applicant, or parent corporation of the permit holder or applicant must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

i. A permit holder or applicant may meet the requirements of Subsection B.8 of this Section for closure and/or post-closure by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must be the parent corporation of the permit holder or applicant. The guarantor must meet the requirements and submit all information required for permit holders or applicants in Subsection B.8.a – h of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subsection B.8.b and d of this Section. The wording of the corporate guarantee must be identical to the wording in Document 10 of Appendix R of this Chapter, except that instructions in

brackets are to be replaced with the relevant information and the brackets deleted. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection B.8 of this Section;

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial blender, composter, or mixer of sewage sludge facility or facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. "closure plans," as used in the guarantee, refers to the plans maintained as required by the Louisiana commercial blender, composter, or mixer of sewage sludge rules and regulations for the closure and post-closure care of facilities, as identified in the guarantee;

iv. for value received from the permit holder or applicant, the guarantor guarantees to the Louisiana Department of Environmental Quality that the permit holder or applicant will perform closure, post-closure care, or closure and post-closure care of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the permit holder or applicant fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Subsection B.3 of this Section, in the name of the permit holder or applicant, in the amount of the current closure or post-closure cost estimates or as specified in Subsection B.1.b of this Section;

v. guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Management and Finance, Financial Services Division and to the permit holder or applicant that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the permit holder or applicant has done so;

vi. the guarantor agrees to notify the Office of Management and Finance, Financial Services Division by certified mail of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vii. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant, unless the permit holder or applicant has done so;

viii. the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, extension or reduction of the time of performance of closure or post closure, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

ix. the guarantor agrees to remain bound under the guarantee for as long as the permit holder must comply with the applicable financial assurance requirements of this Subsection for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Management and Finance, Financial Services Division and the permit holder or applicant. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder or applicant, as evidenced by the return receipts;

x. the guarantor agrees that if the permit holder or applicant fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the owner or operator; and

xi. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).

9. Local Government Financial Test. An owner or operator that satisfies the requirements of Subsection B.9.a – c of this Section may demonstrate financial assurance up to the amount specified in Subsection B.9.d of this Section.

a. Financial Component

i. The owner or operator must satisfy the following conditions, as applicable:

(a). if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

(b). the owner or operator must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

ii. The owner or operator must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have his financial statements audited by an independent certified public accountant (or appropriate state agency).

iii. A local government is not eligible to assure its obligations under Subsection B.9 of this Section if it:

(a). is currently in default on any outstanding general obligation bonds;

(b). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(c). operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

(d). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Subsection B.9.a.ii of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

iv. The following terms used in this Subsection are defined as follows:

(a). *Deficit*—total annual revenues minus total annual expenditures.

(b). *Total Revenues*—revenues from all taxes and fees, but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(c). *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

(d). *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(e). *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

b. Public Notice Component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure and post-closure costs, conformance with *Government Accounting Standards Board Statement 18* assures compliance with this public notice component.

c. Recordkeeping and Reporting Requirements

i. The local government owner or operator must place the following items in the facility's operating record:

(a). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subsection B.9.d of this Section. It must provide evidence that the local government meets the conditions of Subsection B.9.a.i – iii of this Section, and certify that the local government meets the conditions of Subsection B.9.a.i – iii, b, and d of this Section;

(b). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(c). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed upon procedures engagement relative to the financial ratios required by Subsection B.9.a.i.(b) of this Section, if applicable, and the requirements of Subsection B.9.a.ii and iii.(c) - (d) of this Section. The certified public accountant or state agency's report should state the procedures performed and the certified public accountant or state agency's findings; and

(d). a copy of the comprehensive annual financial report (CAFR) used to comply with Subsection B.9.b of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

ii. The items required in Subsection B.9.c.i of this Section must be placed in the facility operating record, in the case of closure and post-closure care, either before the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.

iii. After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

iv. The local government owner or operator is no longer required to meet the requirements of Subsection B.9.c of this Section when:

(a). the owner or operator substitutes alternate financial assurance, as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsection A or B of this Section.

v. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Management and Finance, Financial Services Division that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

vi. The administrative authority, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

d. Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under Subsection B.9 of this Section is determined as follows:

i. if the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or

ii. if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, or corresponding state programs, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under Subsection B.9 of this Section. The total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

iii. the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Subsection B.9.d.i - ii of this Section.

10. Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure and post-closure, as required by Subsections A and B of this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Subsection B.9 of this Section, and must comply with the terms of a written guarantee.

a. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure and post-closure care. The guarantee must provide that:

i. if the owner or operator fails to perform closure and post-closure care, of a facility covered by the guarantee, the guarantor will:

(a). perform, or pay a third party to perform, closure and post-closure care as required; or

(b). establish a fully funded trust fund as specified in Subsection B.3 of this Section in the name of the owner or operator;

ii. the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

iii. if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the owner or operator must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division.

b. Recordkeeping and Reporting

i. The owner or operator must place a certified copy of the guarantee, along with the items required under Subsection B.9.c of this Section, into the facility's operating record before the initial receipt of sewage sludge, other feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure or post-closure care.

ii. The owner or operator is no longer required to maintain the items specified in Subsection B.10.b.i of this Section when:

(a). the owner or operator substitutes alternate financial assurance as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsections A and B of this Section.

iii. If a local government guarantor no longer meets the requirements of Subsection B.9 of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

11. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsections A and B of this Section, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Subsection B.3 - 8 of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

12. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

a. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer to the Office of Management and Finance, Financial Services Division so stating;

b. the state finds the facility in compliance with applicable and appropriate permit conditions;

c. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

d. discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§3111. Pathogens and Vector Attraction Reduction**

A. Scope. This Section contains the following:

1. the requirements for a sewage sludge to be classified either Exceptional Quality or Class B with respect to pathogens;

2. the site restrictions for land on which a Class B sewage sludge is applied;

3. the pathogen requirements for domestic septage applied to agricultural land, forest, or a reclamation site; and

4. alternative vector attraction reduction requirements for sewage sludge that is applied to the land.

B. Special Definitions. In addition to the terms referenced and defined at LAC 33:IX.3101.H, the following definitions apply to this Section:

*Aerobic Digestion*—the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

*Anaerobic Digestio*n—the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

*Density of Microorganisms*—the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

*Land With a High Potential for Public Exposure*—land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g, a construction site located in a city).

*Land With a Low Potential for Public Exposure*—land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

*Pathogenic Organism*s—disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

*pH*—the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

*Specific Oxygen Uptake Rate (SOUR)*—the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

*Total Solids*—the materials in sewage sludge that remain as residue when the sewage sludge is dried to a constant weight at 103° to 105°C.

*Unstabilized Solids*—organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

*Vector Attraction*—the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

*Volatile Solids*—the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550° C in the presence of excess air.

C. Pathogens

1. Sewage Sludge**C**Exceptional Quality

a. The requirement in Subsection C.1.b of this Section and the requirements in either Subsection C.1.c, d, e, f, g, or h of this Section shall be met for a sewage sludge to be classified Exceptional Quality with respect to pathogens.

b. The Exceptional Quality pathogen requirements in Subsection C.1.c - h of this Section shall be met either prior to meeting or at the same time the vector attraction reduction requirements in Subsection D of this Section, except the vector attraction reduction requirements in Subsection D.2.f - h of this Section, are met.

c. Exceptional Quality**C**Alternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time.

(a). When the percent solids of the sewage sludge is 7 percent or higher, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 20 minutes or longer, and the temperature and time period shall be determined using equation (2), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131{,}700{,}000}{10^{0.1400t}} \qquad \text{Equation (2)}$$

Where:

D = time in days.

t = temperat ure in degrees Celsius.

(b). When the percent solids of the sewage sludge is 7 percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 15 seconds or longer, and the temperature and time period shall be determined using equation (2).

(c). When the percent solids of the sewage sludge is less than 7 percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (2).

(d). When the percent solids of the sewage sludge is less than 7 percent, the temperature of the sewage sludge is 50°C or higher, and the time period is 30 minutes or longer, the temperature and time period shall be determined using equation (3).

$$D = \frac{50{,}070{,}000}{10^{0.1400t}} \qquad \text{Equation (3)}$$

Where:

D = time in days.

t = temperature in degrees Celsius.

d. Exceptional Quality**C**Alternative 2

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable

Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii.(a). The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(b). The temperature of the sewage sludge shall be above 52° C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(c). At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

e. Exceptional Quality**C**Alternative 3

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii.(a). The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(b). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(c). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(d). After the enteric virus reduction in Subsection C.1.e.ii.(c) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be Exceptional Quality with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subsection C.1.e.ii.(c) of this Section.

iii.(a). The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(b). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(c). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(d). After the viable helminth ova reduction in Subsection C1.e.iii.(c) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be Exceptional Quality with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subsection C.1.e.iii.(c) of this Section.

f. Exceptional Quality**C**Alternative 4

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LA C 33:IX.3101.H.

ii. The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in LAC 33:IX.3103.A.2.a and 3.a, unless otherwise specified by the permitting authority.

iii. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

g. Exceptional Quality C Alternative 5

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii. Sewage sludge that is used or disposed shall be treated in one of the Processes to Further Reduce Pathogens described in Appendix Q of this Chapter.

h. Exceptional Quality C Alternative 6

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of Exceptional Quality as defined in LAC 33:IX.3101.H.

ii. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Further Reduce Pathogens, as determined by the permitting authority.

2. Sewage Sludge C Class B

a.i. The requirements in either of Subsection C.2.b, c, or d of this Section shall be met for a sewage sludge to be classified Class B with respect to pathogens.

ii. The site restrictions in Subsection C.2.e of this Section shall be met when sewage sludge that meets the Class B pathogen requirements in Subsection C.2.b, c, or d of this Section is applied to the land.

b. Class B C Alternative 1

i. Seven representative samples of the sewage sludge that is used or disposed shall be collected.

ii. The geometric mean of the density of fecal coliform in the samples required by Subsection C.2.b.i of this Section shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

c. Class B C Alternative 2. Sewage sludge that is used or disposed shall be treated in one of the Processes to Significantly Reduce Pathogens described in Appendix Q of this Chapter.

d. Class B C Alternative 3. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Significantly Reduce Pathogens, as determined by the permitting authority.

e. Site Restrictions

i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to incorporation into the soil.

iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.

v. Animals shall not be grazed on the land for 30 days after application of sewage sludge.

vi. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

vii. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge, by means approved by the administrative authority.

viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge, by means approved by the administrative authority.

3. Domestic Septage. For domestic septage applied to agricultural land, forest, or a reclamation site:

a. the site restrictions in Subsection C.2.e of this Section shall be met; or

b. the pH of the domestic septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes and the site restrictions in Subsection C.2.e.i - iv of this Section shall be met.

D. Vector Attraction Reduction

1.a. One of the vector attraction reduction requirements in Subsection D.2.a - j of this Section shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in Subsection D.2.a - h of this Section shall be met when bulk sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in Subsection D.2.a - h of this Section shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

d. One of the vector attraction reduction requirements in Subsection D.2.i, j, or k shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

2.a. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent (see calculation procedures in *Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge*, EPA-625/R-92/013, 1992, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268).

b. When the 38 percent volatile solids reduction requirement in Subsection D.2.a of this Section cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent, vector attraction reduction is achieved.

c. When the 38 percent volatile solids reduction requirement in Subsection D.2.a of this Section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2 percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.

d. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° C.

e. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° C and the average temperature of the sewage sludge shall be higher than 45° C.

f. The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

g. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials.

h. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

i.i. Sewage sludge shall be injected below the surface of the land.

ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

iii. When the sewage sludge that is injected below the surface of the land is Exceptional Quality with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

j.i. Sewage sludge applied to the land surface shall be incorporated into the soil within six hours after application to the land, unless otherwise specified by the permitting authority.

ii. When sewage sludge that is incorporated into the soil is Exceptional Quality with respect to pathogens, the sewage sludge shall be applied to the land within eight hours after being discharged from the pathogen treatment process.

k. The pH of domestic septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

**§3113. Incineration**

A. Applicability

1. This Section applies to a person who fires only sewage sludge or sewage sludge and auxiliary fuel, as defined in Subsection B of this Section, in a sewage sludge incinerator, to a sewage sludge incinerator, as defined in Subsection B of this Section, and to sewage sludge or sewage sludge and auxiliary fuel fired in a sewage sludge incinerator.

2. This Section applies to the exit gas from a sewage sludge incinerator stack.

B. Special Definitions. All terms not defined below shall have the meaning given them in LAC 33:IX.3101.H and in LAC 33:III.111.

*Air Pollution Control Device*—one or more processes used to treat the exit gas from a sewage sludge incinerator stack.

*Auxiliary Fuel*—fuel used to augment the fuel value of sewage sludge. This includes, but is not limited to, natural gas, fuel oil, coal, gas generated during anaerobic digestion of sewage sludge, and municipal solid waste (not to exceed 30 percent of the dry weight of sewage sludge and auxiliary fuel together). Hazardous wastes are not auxiliary fuel.

*Average Daily Concentration*—the arithmetic mean of the concentration of a pollutant in milligrams per kilogram of sewage sludge (dry weight basis) in the samples collected and analyzed in a month.

*Control Efficiency*—the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

*Dispersion Factor*—the ratio of the increase in the ground level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack.

*Fluidized Bed Incinerator*—an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

*Hourly Average*—the arithmetic mean of all measurements, taken during an hour. At least two measurements must be taken during the hour.

*Incineration*—the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

*Incinerator Operating Combustion Temperature*—the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day (24 hours) when the temperature is averaged and recorded at least hourly during the hours the incinerator operates in a day.

*Monthly Average*—the arithmetic mean of the hourly averages for the hours a sewage sludge incinerator operates during the month.

*Performance Test Combustion Temperature*—the arithmetic mean of the average combustion temperature in the hottest zone of the furnace for each of the runs in a performance test.

*Risk Specific Concentration*—the allowable increase in the average daily ground level ambient air concentration for a pollutant from the incineration of sewage sludge at or beyond the property line of the site where the sewage sludge incinerator is located.

*Sewage Sludge Feed Rate*—either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365-day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

*Sewage Sludge Incinerator*—an enclosed device in which only sewage sludge or sewage sludge and auxiliary fuel are fired.

*Stack Height*—the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground at the base of the stack when the difference is equal to or less than 214 feet (65 meters). When the difference is greater than 214 feet (65 meters), stack height is the creditable stack height determined in accordance with LAC 33:III.921.

*Standard*—a standard of performance proposed or promulgated under this Subchapter.

*Stationary Source*—any building, structure, facility, or installation that emits or may emit any air pollutant.

*Total Hydrocarbons*—the organic compounds in the exit gas from a sewage sludge incinerator stack measured using a flame ionization detection instrument referenced to propane.

*Wet Electrostatic Precipitator*—an air pollution control device that uses both electrical forces and water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

*Wet Scrubber*—an air pollution control device that uses water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

C. General Requirements

1. No person shall fire sewage sludge or sewage sludge and auxiliary fuel in a sewage sludge incinerator except in compliance with the requirements in this Section.

2. Performance Tests for New Stationary Sources

a. Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of such facility and at such other times as may be required by the state administrative authority, the owner or operator of such facility shall conduct performance test(s) and furnish the state administrative authority a written report of the results of such performance test(s).

b. Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained for each applicable requirement in Subsections D, E, and F of this Section, unless the state administrative authority:

i. specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

ii. approves the use of an equivalent method;

iii. approves the use of an alternative method the results of which have been determined by the state administrative authority to be adequate for indicating whether a specific source is in compliance;

iv. waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means, to the state administrative authority's satisfaction, that the affected facility is in compliance with the standard; or

v. approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this Subparagraph shall be construed to abrogate the state administrative authority's right to require additional testing if deemed necessary for proper determination of the standard of performance of the new stationary source.

c. Performance tests shall be conducted under such conditions as the state administrative authority shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the state administrative authority such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of start-up, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

d. The owner or operator of an affected facility shall provide the state administrative authority at least 30 days prior notice of any performance test, except as otherwise specified in this Subsection, to afford the state administrative authority the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the state administrative authority as soon as possible of any delay in the original test date either by providing at least seven days prior notice of the rescheduled date of the performance test or by arranging a rescheduled date with the state administrative authority by mutual agreement.

e. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

i. sampling ports adequate for test methods applicable to such facility, including:

(a). constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(b). providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

ii. safe sampling platform(s);

iii. safe access to sampling platform(s); and

iv. utilities for sampling and testing equipment.

f. Unless otherwise specified in the applicable parts of this Paragraph, each performance test shall consist of three separate runs using the applicable test method. Each

run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the state administrative authority's approval, be determined using the arithmetic mean of the results of the two other runs.

3. In conducting the performance tests required in Subsection C.2 of this Section, the owner or operator shall use as reference methods and procedures the test methods referenced in LAC 33:IX.3101.G or other methods and procedures as specified in this Section, except as provided for in Subsection C.2.b of this Section.

4.a. The owner or operator of any sewage sludge incinerator subject to the provisions of this Subchapter shall conduct a performance test during which the monitoring and recording devices required under Subsection F.2, 4, 6, 8.a, and 9 of this Section are installed and operating and for which the sampling and analysis procedures required under Subsection G.1.d of this Section are performed as follows:

i. for incinerators that commenced construction or modification on or before April 18, 1986, the performance test shall be conducted within 360 days of the effective date of these regulations, unless the monitoring and recording devices required under Subsection F.2, 4, 6, 8.a, and 9 of this Section were installed and operating and the sampling and analysis procedures required under Subsection G.1.d of this Section were performed during the most recent performance test and a record of the measurements taken during the performance test is available for review by the state administrative authority; and

ii. for incinerators that commence construction or modification on or after the effective date of these regulations, the date of the performance test shall be determined by the requirements in Subsection C.2 of this Section.

b. The owner or operator shall provide the state administrative authority at least 30 days prior notice of the performance test to afford the state administrative authority the opportunity to have an observer present.

5. The owner or operator of any sewage sludge incinerator, other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber, shall submit a plan to the state administrative authority for approval for monitoring and recording incinerator and control device operation parameters. The plan shall be submitted to the state administrative authority as follows:

a. no later than 90 days after October 6, 1988, for sources that have provided notification of commencement of construction prior to October 6, 1988;

b. no later than 90 days after the notification of commencement of construction, for sources that provide notification of commencement of construction on or after October 6, 1988; and

c. at least 90 days prior to the date on which the new control device becomes operative for sources switching to a control device other than a wet scrubber.

D. Pollutant Limits

1. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for beryllium in subpart C of 40 CFR part 61 (as incorporated by reference at LAC 33:III.5116).

2. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for mercury in subpart E of 40 CFR part 61 (as incorporated by reference at LAC 33:III.5116).

3. Pollutant Limit **C** Lead

a. The average daily concentration for lead in sewage sludge fed to a sewage sludge incinerator shall not exceed the concentration calculated using equation (4).

$$C = \frac{0.1 \times NAAQS \times 86{,}400}{DF \times (1 - CE) \times SF} \qquad \text{Equation (4)}$$

Where:

C = average daily concentration of lead in sewage sludge.

NAAQS = national Ambient Air Quality Standard for lead in micrograms per cubic meter.

DF = dispersion factor in micrograms per cubic meter per gram per second.

CE = sewage sludge incinerator control efficiency for lead in hundredths.

SF = sewage sludge feed rate in metric tons per day (dry weight basis).

b. The dispersion factor (DF) in equation (4) shall be determined from an air dispersion model in accordance with Subsection D.5 of this Section.

i. When the sewage sludge stack height is 214 feet (65 meters) or less, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

ii. When the sewage sludge incinerator stack height exceeds 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

c. The control efficiency (CE) for equation (4) shall be determined from a performance test of the sewage sludge incinerator in accordance with Subsection D.5 of this Section.

4. Pollutant Limit - Arsenic, Cadmium, Chromium, and Nickel

a. The average daily concentration for arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator each shall not exceed the concentration calculated using equation (5).

$$C = \frac{RSC \times 86{,}400}{DF \times (1 - CE) \times SF} \qquad \text{Equation (5)}$$

Where:

C = average daily concentration of arsenic, cadmium, chromium, or nickel in sewage sludge.

CE = sewage sludge incinerator control efficiency for arsenic, cadmium, chromium, or nickel in hundredths.

DF = dispersion factor in micrograms per cubic meter per gram per second.

RSC = risk specific concentration for arsenic, cadmium, chromium, or nickel in micrograms per cubic meter.

SF = sewage sludge feed rate in metric tons per day (dry weight basis).

b. The risk specific concentrations for arsenic, cadmium, and nickel used in equation (5) shall be obtained from Table 1 of LAC 33:IX.3113.D.

| Table 1 of LAC 33:IX.3113.D | |
|---|---|
| **Risk Specific Concentration for Arsenic, Cadmium, and Nickel** | |
| **Pollutant** | **Risk Specific Concentration (micrograms per cubic meter)** |
| Arsenic | 0.023 |
| Cadmium | 0.057 |
| Nickel | 2.0 |

c. The risk specific concentration for chromium used in equation (5) shall be obtained from Table 2 of LAC 33:IX.3113.D or shall be calculated using equation (6).

| Table 2 of LAC 33:IX.3113.D | |
|---|---|
| **Risk Specific Concentration For Chromium** | |
| **Type of Incinerator** | **Risk Specific Concentration (micrograms per cubic meter)** |
| Fluidized bed with wet scrubber | 0.65 |
| Fluidized bed with wet scrubber and wet electrostatic precipitator | 0.23 |
| Other types with wet scrubber | 0.064 |
| Other types with wet scrubber and wet electrostatic precipitator | 0.016 |

$$RSC = \frac{0.0085}{r} \qquad \text{Equation (6)}$$

Where:

RSC = risk specific concentration for chromium in micrograms per cubic meter used in equation (5).

r = decimal fraction of the hexavalent chromium concentration in the total chromium concentration measured in the exit gas from the sewage sludge incinerator stack in hundredths.

d. The dispersion factor (DF) in equation (5) shall be determined from an air dispersion model in accordance with Subsection D.5 of this Section.

i. When the sewage sludge incinerator stack height is equal to or less than 214 feet (65 meters), the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (5).

ii. When the sewage sludge incinerator stack height is greater than 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (5).

e. The control efficiency (CE) for equation (5) shall be determined from a performance test of the sewage sludge incinerator in accordance with Subsection D.5 of this Section.

5. Air Dispersion Modeling and Performance Testing

a. The air dispersion model used to determine the dispersion factor in Subsection D.3.b and 4.d of this Section shall be appropriate for the geographical, physical, and population characteristics at the sewage sludge incinerator site. The performance test used to determine the control efficiencies in Subsection D.3.c and 4.e of this Section shall be appropriate for the type of sewage sludge incinerator.

b. For air dispersion modeling initiated after September 3, 1999, the modeling results shall be submitted to the state administrative authority 30 days after completion of the modeling. In addition to the modeling results, the submission shall include a description of the air dispersion model and the values used for the model parameters.

c. The following procedures, at a minimum, shall apply in conducting performance tests to determine the control efficiencies in Subsection D.3.c and 4.e of this Section after September 3, 1999:

i. the performance test shall be conducted under representative sewage sludge incinerator conditions at the highest expected sewage sludge feed rate within the design capacity of the sewage sludge incinerator;

ii. the state administrative authority shall be notified at least 30 days prior to any performance test so the state administrative authority may have the opportunity to observe the test. The notice shall include a test protocol with incinerator operating conditions and a list of test methods to be used; and

iii. each performance test shall consist of three separate runs using the applicable test method. The control efficiency for a pollutant shall be the arithmetic mean of the control efficiencies for the pollutant from the three runs.

d. The pollutant limits in Subsection D.3 and 4 of this Section shall be submitted to the state administrative authority no later than 30 days after completion of the air dispersion modeling and performance test.

e. Significant changes in geographic or physical characteristics at the incinerator site or in incinerator operating conditions require new air dispersion modeling or performance testing to determine a new dispersion factor or a new control efficiency that will be used to calculate revised pollutant limits.

6. Standards for Particulate Matter

a. No owner or operator of any sewage sludge incinerator subject to the provisions of this Section shall discharge or cause the discharge into the atmosphere of:

i. particulate matter at a rate in excess of 0.65 g/kg dry sewage sludge input (1.30 lb/ton dry sewage sludge input); and

ii. any gases that exhibit 20 percent opacity or greater.

b. The owner or operator of a sewage sludge incinerator shall determine compliance with the particulate matter emission standards in Subsection D.6.a of this Section as follows:

i. the emission rate (E) of particulate matter for each run shall be computed using the following equation:

$$E = K(C_S\, Q_{sd})/S$$

where:

E = emission rate of particulate matter, g/kg (lb/ton) of dry sewage sludge input.

$C_s$ = concentration of particulate matter, g/dscm (g/dscf).

$Q_{sd}$ = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

S = charging rate of dry sewage sludge during the run, kg/hr (lb/hr).

K = conversion factor, 1.0 g/g [4.409 $lb^2$/(g-ton)];

ii. method 5 shall be used to determine the particulate matter concentration ($C_s$) and the volumetric flow rate ($Q_{sd}$) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf);

iii. the dry sewage sludge charging rate (S) for each run shall be computed using either of the following equations:

$$S = K_m S_m R_{dm} / \Theta$$

$$S = K_v S_v R_{dv} / \Theta$$

where:

S = charging rate of dry sewage sludge, kg/hr (lb/hr).

$S_m$ = total mass of sewage sludge charged, kg (lb).

$R_{dm}$ = average mass of dry sewage sludge per unit mass of sludge charged, mg/mg (lb/lb).

?= duration of run, in minutes.

$K_m$ = conversion factor, 60 min/hr.

$S_v$ = total volume of sewage sludge charged, $m^3$ (gal).

$R_{dv}$ = average mass of dry sewage sludge per unit volume of sewage charged, mg/liter ($lb/ft^3$).

$K_v$ = conversion factor, 60 X $10^{-3}$ (liter-kg-min)/($m^3$-mg-hr) [8.021 ($ft^3$-min)/(gal-hr)].

iv. the flow measuring device of Subsection F.2 of this Section shall be used to determine the total mass ($S_m$) or volume ($S_v$) of sewage sludge charged to the incinerator during each run. If the flow measuring device is on a time rate basis, readings shall be taken and recorded at 5-minute intervals during the run and the total charge of sewage sludge shall be computed using the following equations, as applicable:

$$S_m = \sum_{i=1}^{n} Q_{mi} / \Theta_i$$

$$S_v = \sum_{i=1}^{n} Q_{vi} / \Theta_i$$

where:

$Q_{mi}$ = average mass flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", kg/min (gal/min).

$Q_{vi}$ = average volume flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", $m^3$/min (gal/min).

$?_i$ = duration of interval "i", min;

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "209 F. Method for Solid and Semisolid Samples" (40 CFR 60.17, incorporated by reference in LAC 33:III.3003) shall be used to determine dry sewage sludge content of each sample (total solids residue), except that:

(a). evaporating dishes shall be ignited to at least 103°C rather than the 550°C specified in step 3(a)(1);

(b). determination of volatile residue, step 3(b) may be deleted;

(c). the quantity of dry sewage sludge per unit sewage sludge charged shall be determined in terms of mg/liter ($lb/ft^3$) or mg/mg (lb/lb); and

(d). the average dry sewage sludge content shall be the arithmetic average of all the samples taken during the run; and

vi. method 9 and the procedures in 40 CFR 60.11 (incorporated by reference in LAC 33:III.3003) shall be used to determine opacity.

E. Operational Standard**C**Total Hydrocarbons

1. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected for 0 percent moisture by multiplying the measured total hydrocarbons concentration by the correction factor calculated using equation (7).

$$Correction\ \ factor\ (\ percent\ moisture) = \frac{1}{(1-X)} \quad \text{Equation (7)}$$

Where:

X = decimal fraction of the percent moisture in the sewage sludge incinerator exit gas in hundredths.

2. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected to 7 percent oxygen by multiplying the measured total hydrocarbons concentration by the correction factor calculated using equation (8).

$$Correction factor\ (oxygen) = \frac{14}{(21-Y)} \quad \text{Equation (8)}$$

Where:

Y = percent oxygen concentration in the sewage sludge incinerator stack exit gas (dry volume/dry volume).

3. The monthly average concentration for total hydrocarbons in the exit gas from a sewage sludge incinerator stack, corrected for 0 percent moisture using the correction factor from equation (7) and to 7 percent oxygen using the correction factor from equation (8), shall not exceed 100 parts per million on a volumetric basis when measured using the instrument required by Subsection F.5 of this Section.

F. Management Practices

1. The owner or operator of a sewage sludge incinerator shall provide access to the sewage sludge charged so that a well-mixed representative grab sample of the sewage sludge can be obtained.

2.a. A flow measuring device that can be used to determine either the mass or volume of sewage sludge charged to the incinerator shall be installed, calibrated, maintained, and properly operated.

b. The flow measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

c. The flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless specified otherwise by the state administrative authority.

3.a. A weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid waste are incinerated together shall be installed, calibrated, maintained, and properly operated.

b. The weighing device shall have an accuracy of ±5 percent over its operating range.

4.a. For incinerators equipped with a wet scrubbing device, a monitoring device that continuously measures and records the pressure drop of the gas flow through the wet scrubbing device shall be installed, calibrated, maintained, and properly operated.

b. Where a combination of wet scrubbers is used in series, the pressure drop of the gas flow through the combined system shall be continuously monitored.

c. The device used to monitor scrubber pressure drop shall be certified by the manufacturer to be accurate within ± 250 pascals (±1 inch water gauge) and shall be calibrated on an annual basis in accordance with the manufacturer's instructions.

5.a. An instrument that continuously measures and records the total hydrocarbons concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

b. The total hydrocarbons instrument shall employ a flame ionization detector, have a heated sampling line maintained at a temperature of 150° C or higher at all times, and be calibrated at least once every 24-hour operating period using propane.

6.a. An instrument that continuously measures and records the oxygen concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

b. The oxygen monitor shall be located upstream of any rabble shaft cooling air inlet into the incinerator exhaust gas stream, fan, ambient air recirculation damper, or any other source of dilution air.

c. The oxygen monitoring device shall be certified by the manufacturer to have a relative accuracy of ±5 percent over its operating range and shall be calibrated according to method(s) prescribed by the manufacturer at least once each 24-hour operating period.

7. An instrument that continuously measures and records information used to determine the moisture content in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

8.a. An instrument that continuously records combustion temperature at every hearth in multiple hearth furnaces, in the bed and outlet of fluidized bed incinerators, and in the drying, combustion, and cooling zones of electric incinerators shall be installed, calibrated, maintained, and properly operated.

b. For multiple hearth furnaces, a minimum of one thermocouple shall be installed in each hearth in the cooling and drying zones, and a minimum of two thermocouples shall be installed in each hearth in the combustion zone.

c. For electric incinerators, a minimum of one thermocouple shall be installed in the drying zone and one in the cooling zone, and a minimum of two thermocouples shall be installed in the combustion zone.

d. Each temperature measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

e. Operation of a sewage sludge incinerator shall not cause the operating combustion temperature for the sewage sludge incinerator to exceed the performance test combustion temperature by more than 20 percent.

9.a. A device for measuring the fuel flow to the incinerator shall be installed, calibrated, maintained, and properly operated.

b. The fuel flow measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

c. The fuel flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless specified otherwise by the state administrative authority.

10.a. An air pollution control device shall be appropriate for the type of sewage sludge incinerator and the operating parameters for the air pollution control device shall be adequate to indicate proper performance of the air pollution control device.

b. Operation of the air pollution control device shall not cause a significant exceedance of the average value for the air pollution control device operating parameters from the performance test required by Subsection D.3.c and 4.e of this Section nor shall the operation of the air pollution control device violate any other requirements of this Section for which the air pollution control device is subjected.

11. The permittee shall collect and analyze sewage sludge fed to a sewage sludge incinerator for dry sludge content and volatile solids content using the method specified at Subsection D.6.b.v of this Section, except that the determination of volatile solids, step (3) (b) of the method shall not be deleted.

12. Sewage sludge shall not be fired in a sewage sludge incinerator if it is likely to adversely affect a threatened or endangered species, listed under section 4 of the Endangered Species Act, or its designated critical habitat.

13. The instruments required in Subsection F.2 - 9 of this Section shall be appropriate for the type of sewage sludge incinerator.

14. The state administrative authority may exempt the owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from the daily sampling and analysis of sludge feed in Subsections F.11 and G.1.d of this Section and from the recordkeeping requirement in Subsection H.2.p of this Section for the volatile solids content, only, of the sewage sludge charged to the incinerator during all periods of this incinerator following the performance test if:

a. the particulate matter emission rate measured during the performance test required under Subsection C.4 of this Section is less than or equal to 0.38 g/kg of dry sewage sludge input (0.75 lb/ton); and

b. the state administrative authority determines that the requirements will not be necessary to evaluate the effects

upon the environment and human health resulting from the emissions from the sewage sludge incinerator.

G. Frequency of Monitoring. Except as specified otherwise in this Section, the frequency of monitoring shall be as follows:

1. Sewage Sludge

a. The frequency of monitoring for beryllium shall be as required in subpart C of 40 CFR part 61 (as incorporated by reference in LAC 33:III.5116), and for mercury as required in subpart E of 40 CFR part 61 (as incorporated by reference in LAC 33:III.5116).

b. The frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel in sewage sludge fed to a sewage sludge incinerator shall be the frequency in Table 1 of LAC 33:IX.3113.G.

| Table 1 of LAC 33:IX.3113.G | |
|---|---|
| **Frequency of Monitoring – Incineration** | |
| **Amount of sewage sludge[1] (metric tons per 365 day period)** | **Frequency** |
| Greater than zero but less than 290 | Once per year |
| Equal to or greater than 290 but less than 1,500 | Once per quarter (4 times per year) |
| Equal to or greater than 1,500 but less than 15,000 | Once per 60 days (6 times per year) |
| Equal to or greater than 15,000 | Once per month (12 times per year) |
| [1] Amount of sewage sludge fired in a sewage sludge incinerator (dry weight basis) | |

c. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.3113.G, the state administrative authority may reduce the frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel.

d. The frequency of monitoring for dry sewage sludge content and volatile solids content of the sewage sludge shall be once per day as a grab sample of the sewage sludge fed to the incinerator.

2. Total Hydrocarbons, Oxygen Concentration, Information to Determine Moisture Content, and Combustion Temperatures. The total hydrocarbons concentration and oxygen concentration in the exit gas from a sewage sludge incinerator stack, the information used to measure moisture content in the exit gas, and the combustion temperatures for the sewage sludge incinerator shall be monitored continuously.

3. Air Pollution Control Device Operating Parameters. Unless specified otherwise in this Subchapter, the frequency of monitoring for the appropriate air pollution control device operating parameters shall be daily.

4.a. The frequency of monitoring shall be as specified in this Section for any performance testing or other sampling requirements not covered above.

b. If the frequency of monitoring is not specified, then the frequency of monitoring shall be as specified by the state administrative authority.

H. Recordkeeping

1. If the owner/operator of a sewage sludge incinerator is the person who prepares sewage sludge, the owner/operator of the sewage sludge incinerator shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. The owner/operator of a sewage sludge incinerator shall develop the following information and shall retain this information for five years:

a. the concentration of lead, arsenic, cadmium, chromium, and nickel in the sewage sludge fed to the sewage sludge incinerator;

b. the total hydrocarbons concentrations in the exit gas from the sewage sludge incinerator stack;

c. information that indicates the requirements in the national emission standard for beryllium in subpart C of 40 CFR part 61 (as incorporated by reference at LAC 33:III.5116) are met;

d. information that indicates the requirements in the national emission standard for mercury in subpart E of 40 CFR part 61 (as incorporated by reference at LAC 33:III.5116) are met;

e. the operating combustion temperatures for the sewage sludge incinerator;

f. values for the air pollution control device operating parameters;

g. the oxygen concentration and information used to measure moisture content in the exit gas from the sewage sludge incinerator stack;

h. the sewage sludge feed rate;

i. the stack height for the sewage sludge incinerator;

j. the dispersion factor for the site where the sewage sludge incinerator is located;

k. the control efficiency for lead, arsenic, cadmium, chromium, and nickel for each sewage sludge incinerator;

l. the risk specific concentration for chromium calculated using equation (6), if applicable;

m. a calibration and maintenance log for the instruments used to measure the total hydrocarbons concentration and oxygen concentration in the exit gas from the sewage sludge incinerator stack, the information needed to determine moisture content in the exit gas, and the combustion temperatures;

n. results of the particulate matter testing required in Subsection D.6.b of this Section;

o. for incinerators equipped with a wet scrubbing device, a record of the measured pressure drop of the gas flow through the wet scrubbing device, as required by Subsection F.4 of this Section;

p. a record of the rate of sewage sludge fed to the incinerator, the fuel flow to the incinerator, and the total solids and volatile solids content of the sewage sludge charged to the incinerator; and

q. results of all applicable performance tests required in this Section.

I. Reporting

1. If the owner/operator of a sewage sludge incinerator is the person who prepares the sewage sludge, the owner/operator shall submit the information in Subsection H.1. of this Section to the state administrative authority on February 19 of each year.

2. The owner/operator of a sewage sludge incinerator shall submit the information in Subsection H.2.a - q of this Section to the state administrative authority on February 19 of each year.

3.a. In addition to the reporting requirements in Subsection I.1 and 2 of this Section, the owner/operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator subject to the provisions of this Subchapter shall submit to the state administrative authority on February 19 and August 19 of each year (semiannually) a report in writing that contains the following:

i. a record of average scrubber pressure drop measurements for each period of 15 minutes duration or more during which the pressure drop of the scrubber was less than, by a percentage specified below, the average scrubber pressure drop measured during the most recent performance test. The percent reduction in scrubber pressure drop for which a report is required shall be determined as follows:

(a). for incinerators that achieved an average particulate matter emission rate of 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input or less during the most recent performance test, a scrubber pressure drop reduction of more than 30 percent from the average scrubber pressure drop recorded during the most recent performance test shall be reported; and

(b). for incinerators that achieved an average particulate matter emission rate of greater than 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input during the most recent performance test, a percent reduction in pressure drop greater than that calculated according to the following equation:

$$P = -111E + 72.15$$

where:

P = percent reduction in pressure drop.

E = average particulate matter emissions (kg/megagram); and

ii. a record of average oxygen content in the incinerator exhaust gas for each period of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds the average oxygen content measured during the most recent performance test by more that 3 percent.

b. The owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from which the average particulate matter emission rate measured during the performance test required at Subsection C.4 of this Section exceeds 0.38 g/kg of dry sewage sludge input (0.75 lb/ton of dry sewage sludge input) shall include in the report for each calendar day that a decrease in scrubber pressure drop or increase in oxygen content of exhaust gas is reported, a record of the following:

i. scrubber pressure drop averaged over each 1-hour incinerator operating period;

ii. oxygen content in the incinerator exhaust averaged over each 1-hour incinerator operating period;

iii. temperatures of every hearth in multiple hearth incinerators, the bed and outlet of fluidized bed incinerators, and the drying, combustion, and cooling zones of electric incinerators averaged over each 1-hour incinerator operating period;

iv. rate of sewage sludge charged to the incinerator averaged over each 1-hour incinerator operating period;

v. incinerator fuel use averaged over each 8-hour incinerator operating period; and

vi. moisture and volatile solids content of the daily grab sample of sewage sludge charged to the incinerator.

c. The owner or operator of any sewage sludge incinerator other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber shall include in the semiannual report a record of control device operation measurements, as specified in the plan approved under Subsection C.5 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

## Appendix P
## Procedure to Determine the Annual Whole Sludge Application Rate for a Sewage Sludge

LAC 33:IX.3103.D.1.d.ii requires that the product of the concentration for each pollutant listed in Table 4 of LAC 33:IX.3103.D in sewage sludge sold or given away in a bag or other container for application to the land and the annual whole sludge application rate (AWSAR) for the sewage sludge not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.3103.D to be exceeded. This Appendix contains the procedure used to determine the AWSAR for a sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded.

The relationship between the annual pollutant loading rate (APLR) for a pollutant and the annual whole sludge application rate (AWSAR) for a sewage sludge is shown in equation (1).

$$APLR = C \times AWSAR \times 0.001 \quad \text{Equation (1)}$$

Where:

APLR = annual pollutant loading rate in kilograms per hectare per 365 day period.

C = pollutant concentration in milligrams per kilogram of total solids (dry weight basis).

AWSAR = annual whole sludge application rate in metric tons per hectare per 365 day period (dry weight basis).

0.001 = a conversion factor.

To determine the AWSAR, equation (1) is rearranged into equation (2):

$$AWSAR = \frac{APLR}{C \times 0.001} \quad \text{Equation (2)}$$

The procedure used to determine the AWSAR for a sewage sludge is presented below.

Procedure:

1. Analyze a sample of the sewage sludge to determine the concentration for each of the pollutants listed in Table 4 of LAC 33:IX.3103.D in the sewage sludge.

2. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of LAC 33:IX.3103.D, calculate an AWSAR for each pollutant using equation (2) above.

3. The AWSAR for the sewage sludge is the lowest AWSAR calculated in Step 2.

## Appendix Q
## Pathogen Treatment Processes

A. Processes to Significantly Reduce Pathogens (PSRP)

1. Aerobic Digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. Air Drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. Anaerobic Digestion. Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35° to 55°C and 60 days at 20°C.

4. Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. Lime Stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

B. Processes to Further Reduce Pathogens (PFRP)

1. Composting. Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. Heat Drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10 percent or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. Heat Treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. Thermophilic Aerobic Digestion. Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55° to 60°C.

5. Beta Ray Irradiation. Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

6. Gamma Ray Irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as $^{60}$Cobalt and $^{137}$Cesium, at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

## Appendix R
## Financial Assurance Documents

Document 1. Liability Endorsement

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE LIABILITY ENDORSEMENT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231
Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be either the permit holder, the applicant, or the operator. (Note: The operator will provide the liability-insurance documentation only when the permit holder/applicant is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial responsibility is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A. The coverage applies at [list the site identification number, site name, facility name, facility permit number, and facility address] for sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal-defense costs.

(B). The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Subclauses (1) - (5), below, are hereby amended to conform with Subclauses (1) - (5), below:

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.3109.A.3, 4, or 5.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein

called the insurer, of [address of the insurer] to [name of the insured] of [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.3109.A.2.b, effective on the date first written above and that insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]
[Typed name of authorized representative of insurer]
[Title of authorized representative of insurer]
[Address of authorized representative of insurer]

Document 2. Certificate of Insurance

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY CERTIFICATE OF LIABILITY INSURANCE

Secretary
Louisiana Department of Environmental Quality
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231
Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

(A). [Name of insurer], the "insurer," of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured, which must be either the permit holder or applicant of the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A. The coverage applies at [list agency interest number, site name, facility name, facility permit number, and site address] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal-defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.3109.A.3, 4, or 5.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.3109.A.2.c, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]
[Typed name of authorized representative of insurer]
[Title of authorized representative of insurer]
[Address of authorized representative of insurer]

Document 3. Letter of Credit

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231
Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No.[number] at the request and for the account of [permit holder's or applicant's name and address] for its [list site identification number, site name, facility name, and facility permit number] at [location], Louisiana, in favor of any governmental body, person, or other entity for any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [permit holder's or applicant's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to the operation of the commercial blender, composter, or mixer of sewage sludge site at the [name of permit holder or applicant] at [site location] as set forth in the *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event we give such notification, any

unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder/applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.3109.A.3.e, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]

[date]

Document 4. Trust Agreement

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY TRUST AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of permit holder or applicant], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of" or "a national bank" or a "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the state of Louisiana, has established certain regulations applicable to the Grantor, requiring that a permit holder or applicant for a permit of a commercial blender, composter, or mixer of sewage sludge processing facility shall provide assurance that funds will be available when needed for [closure and/or post-closure] care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

(a). The term "Grantor" means the permit holder or applicant who enters into this Agreement and any successors or assigns of the Grantor.

(b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.

(c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

SECTION 4. PAYMENT FOR CLOSURE AND/OR POST-CLOSURE CARE OR LIABILITY COVERAGE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims, closure and/or post-closure] care of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims, closure and/or post-closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee

shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

SECTION 19. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the state of Louisiana.

SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.3.i, on the date first written above.

WITNESSES: GRANTOR:

_____ _____

_____ By:_____

Its:_____

[Seal]

TRUSTEE:

_____

By:_____

Its:_____

[Seal]

THUS DONE AND PASSED in my office in _____, on the _____ day of _____, 20_____, in the presence of _____ and _____, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

_____

Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN, that on this _____ day of _____, 20_____, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the _____, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the _____ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of _____ and _____, competent witnesses, who have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

_____

_____

_____

NOTARY PUBLIC

Document 5. Surety Bond

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY FINANCIAL GUARANTEE BOND

Date bond was executed:_____

Effective date:_____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:_____

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure and/or post-closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the commercial blender, composter, or mixer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.3109.B and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.3109.B and the conditions of the commercial blender, composter, or mixer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.3109.B.4.h, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETIES

[Name and Address]

State of incorporation:_____

Liability limit:_____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[This information must be provided for each cosurety]

Bond Premium: $_____

Document 6. Performance Bond

COMMERCIAL BLENDER, COMPOSTER,
OR MIXER OF SEWAGE SLUDGE
FACILITY PERFORMANCE BOND

Date bond was executed:_____

Effective date:_____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:_____

Surety: [name(s) and business address(es)]

[agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post-closure costs separately)]

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the commercial blender, composter, or mixer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.3107.B.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the LAC 33:IX.3107.B.3, or of its permit for the facility for which this bond guarantees performance of post-closure, the Surety shall either perform post-closure in accordance with the closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.3109.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.3109.B and the conditions of the commercial blender, composter, or

mixer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.3109.B.5.h, effective on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]
CORPORATE SURETY
[Name and address]
State of incorporation:_____
Liability limit: $_____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $_____

Document 7. Letter of Credit

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231
Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the [closure and/or post-closure] fund for its [list agency interest number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars $_____ upon presentation of:

(i). A sight draft, bearing reference to the Letter of Credit No. _____ drawn by the administrative authority, together with;

(ii). A statement, signed by the administrative authority, declaring that the amount of the draft is payable into the standby trust fund pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.6.h, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]
[date]

Document 8. Certificate of Insurance

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST-CLOSURE CARE

Name and Address of Insurer: _____
(hereinafter called the "Insurer")
Name and Address of Insured: _____
(hereinafter called the "Insured") (Note: Insured must be the permit holder or applicant)

Facilities covered: [list the agency interest number, site name, facility name, facility permit number, address, and amount of insurance for closure and/or post-closure care] (These amounts for all facilities must total the face amount shown below.)

Face Amount: _____
Policy Number: _____
Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure and/or post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.3109.B, as applicable, and as such regulations were constituted on the date shown

immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana and that the wording of this certificate is identical to the wording specified in LAC 33:IX.3109.B.7.j, effective on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:_____

[Date]

Document 9. Letter from the Chief Financial Officer

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY LETTER FROM THE CHIEF FINANCIAL OFFICER (LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE)

Secretary

Louisiana Department of Environmental Quality

Post Office Box 82231

Baton Rouge, Louisiana 70884-2231

Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage," "closure," and/or "post-closure," as applicable] as specified in [insert "*Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A," "LAC 33:IX.3109.B," or LAC 33:IX.3109.A and B"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure and post-closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.3109.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is demonstrated through a financial test similar to that specified in LAC 33:IX.3109.B or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.3109.B" or "LAC 33:IX.3109.A and B"], [insert "liability coverage," "closure," "post-closure," or "closure and post-closure"] care of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.3109.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

ALTERNATIVE I

| | | |
|---|---|---|
| 1. Amount of annual aggregate liability coverage to be demonstrated | $ _____ | |
| *2. Current assets | $ _____ | |
| *3. Current liabilities | $ _____ | |
| *4. Tangible net worth | $ _____ | |
| *5. If less than 90 percent of assets are located in the U.S., give total U.S. assets | $ _____ | |
| | YES | NO |
| 6. Is line 4 at least $10 million? | _____ | _____ |
| 7. Is line 4 at least 6 times line 1? | _____ | _____ |

*8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9. _____ _____

9. Is line 4 at least 6 times line 1? _____ _____

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated $ _____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth $ _____

*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) $ _____

| | YES | NO |
|---|---|---|
| 7. Is line 5 at least $10 million? | _____ | _____ |
| 8. Is line 5 at least 6 times line 1? | _____ | _____ |
| *9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10. | _____ | _____ |
| 10. Is line 6 at least 6 times line 1? | _____ | _____ |

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure and/or post-closure care.]

PART B. CLOSURE AND/OR POST CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

ALTERNATIVE I

1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above) $ _____

*2. Tangible net worth $ _____

*3. Net worth $ _____

*4. Current Assets $ _____

*5. Current liabilities $ _____

*6. The sum of net income plus depreciation, depletion, and amortization $ _____

*7. Total assets in U.S. (requiredonly if less than 90 percent of firm's assets are located in the U.S.) $ _____

| | YES | NO |
|---|---|---|
| 8. Is line 2 at least $10 million? | _____ | _____ |
| 9. Is line 2 at least 6 times line 1? | _____ | _____ |
| *10. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 11. | _____ | _____ |
| 11. Is line 7 at least 6 times line 1? | _____ | _____ |

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

ALTERNATIVE II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates shown above) $ _____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth (if any portion of the closure and/or post-closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line) $ _____

*6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.) $ _____

| | YES | NO |
|---|---|---|
| 7. Is line 5 at least $10 million? | _____ | _____ |
| 8. Is line 5 at least 6 times line 1? | _____ | _____ |
| 9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10. | _____ | _____ |
| 10. Is line 6 at least 6 times line 1? | _____ | _____ |

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage, closure, and/or post-closure care.]

PART C. LIABILITY COVERAGE, CLOSURE AND/OR POST-CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

ALTERNATIVE I

1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above $ _____

2. Amount of annual aggregate liability coverage to be demonstrated $ _____

3. Sum of lines 1 and 2 $ _____

*4. Total liabilities (If any portion of your closure and/or post-closure cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.) $ _____

*5. Tangible net worth $ _____

*6. Net worth $ _____

*7. Current assets $ _____

*8. Current liabilities $ _____

*9. The sum of net income plus depreciation, depletion, and amortization $ _____

*10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) $ _____

| | YES | NO |
|---|---|---|
| 11. Is line 5 at least $10 million? | _____ | _____ |
| 12. Is line 5 at least 6 times line 3? | _____ | _____ |
| *13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14. | _____ | _____ |
| 14. Is line 10 at least 6 times line 3? | _____ | _____ |

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

ALTERNATIVE II

| | |
|---|---|
| 1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above | $ _____ |
| 2. Amount of annual aggregate liability coverage to be demonstrated | $ _____ |
| 3. Sum of lines 1 and 2 | $ _____ |
| 4. Current bond rating of most recent issuance of this firm and name of rating service | _____ |
| 5. Date of issuance of bond | _____ |
| 6. Date of maturity of bond | _____ |
| *7. Tangible net worth (If any portion of the closure and/or post-closure cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.) | $ _____ |
| *8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) | $ _____ |

| | YES | NO |
|---|---|---|
| 9. Is line 7 at least $10 million? | _____ | _____ |
| 10. Is line 7 at least 6 times line 3? | _____ | _____ |
| *11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12. | _____ | _____ |
| 12. Is line 8 at least 6 times line 3? | _____ | _____ |

(The following is to be completed by all firms providing the financial test)

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:IX.3109.B.8.d.

[Signature of chief financial officer for the firm]
[Typed name of chief financial officer]
[Title]
[Date]

Document 10. Corporate Guarantee

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY CORPORATE GUARANTEE FOR LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

Recitals

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.8.i.

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"] hereinafter referred to as [insert "permit holder" or "applicant"] for the following commercial blender, composter, or mixer of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post-closure and the amount of annual aggregate liability coverage, closure, and/or post-closure costs covered by the guarantee]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.3107.B.3, for the closure and/or post-closure care of the facility identified in Paragraph (B) above.

(D). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [insert "permit holder" or "applicant"] fails to perform [insert "closure," "post-closure care," or "closure and post-closure care"] of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.3109.B.3, as applicable, in the name of [insert "permit holder" or "applicant"] in the amount of the current closure and/or post-closure estimates as specified in LAC 33:IX.3109.B.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that [insert "permit holder" or "applicant"] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [insert "permit holder" or "applicant"] that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, in the name of the [insert "permit holder" or "applicant"]. Within 120 days after the end of such fiscal year, the guarantor shall establish such

financial assurance unless [insert "permit holder" or "applicant"] has done so.

(G). The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [insert "liability coverage" or "closure and/or post-closure care"] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, in the name of [insert "permit holder" or "applicant"] unless [insert "permit holder" or "applicant"] has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure and post-closure, insert "amendment or modification of the closure and/or post-closure care, the extension or reduction of the time of performance of closure and/or post-closure"], or any other modification or alteration of an obligation of the [insert "permit holder" or "applicant"] pursuant to LAC 33:IX.3107.B.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the [insert "permit holder" or "applicant"] must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"] for the above-listed facility, except that guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the [insert "permit holder" or "applicant"], such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the [insert "permit holder" or "applicant"], as evidenced by the return receipts.

(K). The guarantor agrees that if the [insert "permit holder" or "applicant"] fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from guarantor, guarantor shall provide such alternate financial assurance in the name of the [insert "permit holder" or "applicant"].

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the [insert "permit holder" or "applicant"]. Guarantor expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:IX.3109.B.8.i, effective on the date first above written.

Effective date:_____

[Name of Guarantor]

[Authorized signature for guarantor]

[Typed name and title of person signing]

Thus sworn and signed before me this [date].

_____

Notary Public

A public hearing will be held on February 25, 2002, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by WP034. Such comments must be received no later than March 4, 2002, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of WP034.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at http://www.deq.state.la.us/ planning/regs/index.htm.

James H. Brent, Ph.D.
Assistant Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
## RULE TITLE: Use or Disposal of Sewage Sludge

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No additional personnel or cost to the agency is expected during the first fiscal year. However, upon assumption of the sewage sludge program from EPA (expected during FY 02-03), it is anticipated that there will be a need to hire one staff member to handle additional requirements that will result from program assumption. Costs will be approximately $49,586 in FY 02-03 and $48,816 in FY 03-04. The source of funding to implement this rule is existing permit fees and the EPA 106 grant program.

No significant costs to local governmental units is anticipated since local government is currently required to comply with similar federal and state regulations. In cases where local government would have to switch from surface disposal that is not allowed in the rule, to another use or disposal method allowed in the rule, an additional marginal cost may be incurred.

Local governmental units could potentially each save an average $1,500 every five years in consultant fees for completion of the Notice of Intent for the EPA General Permit that would be eliminated when the state assumes authority for the Sludge Management Program from EPA. Elimination of this cost would amount to an approximate combined savings of $2,700,000 every five years for the approximately 1,800 Publicly Owned Treatment Works (POTWs) facilities that produce sewage sludge in the state.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Permit fees are presently already in place, therefore, there is no anticipated increase in agency self-generated funds other than from new sources which may come under permitting requirements. However, an estimate of these revenues would be difficult to calculate due to an uncertainty of the number of new sources which may begin operation after promulgation of the rule. After Sewage Sludge Program assumption from EPA, it is anticipated that the EPA 106 grant will provide a 40 percent match for personnel salary costs. This accounts for approximately $18,294 in federal funds for FY 02-03 and $19,026 in FY 03-04.

Local government sewer user fees, designated sewer user property taxes, or other taxes may increase for some facilities if they are required to change from their present sewage sludge surface disposal practice to some other form of use or disposal. Three POTWs have definitely been identified as falling in this category. All three are already looking at alternatives.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is the potential for an increase in the demand for consultants who specialize in soils and/or sewage sludge use or disposal and also for private land appliers of sewage sludge. However, an exact impact on receipts and/or income would be difficult to quantify since no information is readily available to determine the number of facilities that might convert from one method of disposal to land application or incineration. There may also be an increase in the number of private land appliers of sewage sludge that, if realized, would increase the number of jobs and small businesses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect on competition and employment is anticipated from this proposed rule since all facilities will be impacted equally.

James H. Brent, Ph.D.
Assistant Secretary
0201#045

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor
### Division of Administration
### Racing Commission

Corrupt and Prohibited Practices C Penalty Guidelines (LAC 35:I.1797)

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35:I.1797, "Penalty Guidelines," in order to update the penalties for administering Class IV and V drugs/substances to 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
### §1797. Penalty Guidelines

A. - B.3. ...

4. Classes IV and V: possible suspension of license for a period not more than 60 days and a fine of not less than $500 nor more than $1,500, or both, depending on the severity and number of violations occurring within a 12-month period. The purse may be redistributed.

a. On ordinary violation(s) of Classes IV or V within a 12-month period the penalty shall be a fine of $500 on the first violation, a fine of $1,000 on the second violation, a fine of $1,000 on the third and subsequent violations and referred to the commission. The purse shall be redistributed commencing with the fourth violation within a 12-month period.

b. On extraordinary violation(s) of Classes IV or V in a manner that might affect the performance of a horse within a 12-month period the penalty shall be a fine of $1,000 on the first offense; a fine of $1,000 and referred to the commission for further action on second and subsequent violations. The purse shall be redistributed commencing with the third violation within a 12-month period.

c. On gross violation(s) of Classes IV or V in a manner that intends to affect the performance of a horse the penalty shall be not less than $1,000 and referred to the commission for further action. The purse shall be redistributed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission LR 19:612 (May 1993), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

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 February 11, 2002, 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 C Penalty Guidelines

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 these rules, other than those one-time costs directly associated with the publication of these rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is estimated to be no effect on revenue collections of local governmental units associated with this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action benefits the industry in general by assuring fairness among horsemen by using a just, updated penalty system for violators of rules for unacceptable drug/substance use on horses in racing, particularly those drugs/substances in Class IV and V.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the proposed rule.

| | |
|---|---|
| Charles A Gardiner III | Robert E. Hosse |
| Executive Director | General Government Section Director |
| 0201#078 | Legislative Fiscal Office |

## NOTICE OF INTENT

### Office of the Governor
### Division of Administration
### Office of State Uniform Payroll

Direct Deposit (LAC 4:III.Chapter 3 and 5)

In accordance with R.S. 39:247 and R.S. 42:455, notwithstanding any other provision of law to the contrary, the Office of the Governor, Division of Administration, Office of State Uniform Payroll is proposing to adopt the following rule regarding direct deposit of employee pay and direct deposit of vendor payments and electronic receipt of supporting data, respectively. The purpose of the rule is to set requirements for employees and vendors paid through the statewide ISIS Human Resource System for direct deposit of employee pay and for direct deposit of vendor payments and electronic receipt of supporting data, to establish waivers (exceptions to the rule), and to establish guidelines for enforcement of the rule. Electronic processing of employee pay and the electronic processing of vendor payments and supporting data is the direction that the private sector, Federal Government, and many states are moving towards. Direct deposit is a fast, safe, and proven service that is provided at minimal or no cost to employees and vendors.

**Title 4**
**ADMINISTRATION**
**Part III. Payroll**
**Chapter 3. Direct Deposit of Employee Pay**
**§301. Definitions**

*Agency***C**any one of the 20 major departments of state government or any subdivision thereof.

*Automated Clearing House (ACH)***C**the network, operated by the Federal Reserve Bank, which establishes procedures and guidelines regarding electronic transfer of funds.

*Compensation***C**any form of monetary pay issued to an employee for services performed.

*Condition of Employment***C**policy requiring a particular requirement to be met in order for offer of employment to be given.

*Department Head***C**the person responsible for the operation of a department.

*Direct Deposit***C**the automatic deposit, through electronic transfer of funds, of employees' compensation into a checking or savings account at a bank, savings and loan, or credit union of their choice.

*Direct Deposit Enrollment Authorization Form***C**the standard form developed by the Division of Administration, Office of State Uniform Payroll, completed by the employee, giving the employing agency authority to process employee specific direct deposit bank account information in the ISIS Human Resource System for the electronic transfer of funds.

*Division of Administration (DOA)***C**the Louisiana State Agency under the Executive Department which provides centralized administrative and support services to state agencies as a whole by developing, promoting, and implementing executive policies and legislative mandates.

*Electronic* Processing**C**method of automatically transferring data/funds through computers rather than through hard copy.

*Employee Administration***C**the section within an agency responsible for payroll and human resources.

*Employing* Agency**C**the agency for which an employee is currently working.

*Financial Institution***C**a bank, savings and loan, or credit union who is established as a receiver of ACH payments.

*Geographical* Barrier**C**an obstacle based on the physical location of an employee in relation to the physical location of a financial institution that would impede an employee's ability to obtain funds from the financial institution.

*ISIS Human Resource* System**C**the integrated statewide information system administered by the Division of Administration, Office of State Uniform Payroll to provide uniform payroll services to state agencies.

*Net* Pay**C**the amount of compensation due to the employee after taking an employees wages and compensation earned and deducting all voluntary and involuntary deductions.

*Office of State Uniform Payroll (OSUP)***C**the section within the Division of Administration primarily responsible for the DOA statewide payroll system and administration of the rules governing state employee payroll deductions.

*Physical/Mental Disability Barrier***C**an obstacle based on a physical or mental impairment that would impede an employee's ability to obtain an account at a financial institution or impede an employee's ability to obtain funds from a financial institution.

*Primary Bank Account***C**an employee's checking or savings account at a financial institution to which net pay is deposited.

*Prospective Employee***C**a person to whom an agency wishes to issue an offer of employment.

*Representative***C**a person appointed by the Department Head to handle the operation of the department.

*Secondary Bank Account***C**an employee's checking or savings account at a financial institution to which a fixed dollar amount or percentage of net pay is deposited.

*Suspense Holding Account***C**a bank account established and maintained by the Division of Administration to which funds for employees not complying with this rule will be deposited until such time employee forwards direct deposit enrollment authorization form to the Employee Administration section of the employing agency.

*Third Party Account***C**bank account established for a person other than the employee.

*Wage***C**payment for services to an employee.

*Waiver***C**authorization by the Division of Administration, Office of State Uniform Payroll, for an exception to the enforcement of this rule.

*Waiver Form***C**the standard form developed by the Division of Administration, Office of State Uniform Payroll, completed by the employee to request a waiver from the requirement of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**§303. Direct Deposit of Employee Pay**

A. Beginning July 1, 2002, all employees paid through the ISIS Human Resource System are required to receive wage and compensation payments via direct deposit through the Automated Clearing House (ACH). Employees must complete an approved direct deposit enrollment authorization form to establish direct deposit of net pay to the employee's primary bank account at an approved financial institution. Employees may choose to send, via direct deposit, a fixed dollar amount or a percentage of net pay to a secondary bank account by completing an approved direct deposit enrollment authorization form for a secondary account. These forms can be obtained from the Employee Administration office of the employing agency. Completed forms must be forwarded to the Employee Administration office of the employing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**§305. Direct Deposit of Employee Pay to a Third Party's Account**

A. Direct deposit of employee pay cannot be set up to go to a third party's account. This includes any account where the employee is not named on the account. Exceptions may be made by the employing agency for deposits to a dependent's account or to the account of a parent/guardian, when the employee is a dependent of the parent/guardian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**§307. Condition of Employment**

A. Direct deposit of pay must be considered a condition of employment, and agencies shall not submit job offers to prospective employees who are not willing to receive their wage and compensation payments via direct deposit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**§309. Request for Direct Deposit Waiver**

A. Employees may request a waiver of the requirement for direct deposit by completing and submitting to the Employee Administration office of the employing agency a request for direct deposit waiver on an approved waiver form. The approved form can be obtained from the Employee Administration office of the employing agency. The Employee Administration Office is required to submit all requests for waivers to the Department Head or Representative. The Department Head or Representative must approve or deny the waiver based on reasonableness of the request. Approved waivers must be submitted to the Office of State Uniform Payroll for final approval/denial. The Office of State Uniform Payroll will approve, or deny, the request for waiver and return the form to the agency who must then notify the employee of the status of the request for waiver. The agency must maintain a copy of the waiver form with the employee's records with a notation as to when the employee was notified of the waiver status. Waivers may be approved for geographical barriers, physical/mental disability barrier, or inability to establish an account at any financial institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**§311. Enforcement of Rule**

A. Checks will not be produced for employees who have not complied with the provisions of this rule. Wage and compensation payments will be suspended and placed in a suspense holding account until such time that employee completes an approved direct deposit enrollment authorization form and forwards said form to the Employee Administration office of the employing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**§313. Department/Agency Responsibility**

A. Departments/Agencies are responsible for incorporating within the hiring process notification of direct deposit as a condition of employment, enforcing compliance with this rule, reviewing and approving/denying employee requests for waivers, forwarding approved waivers to the Office of State Uniform Payroll for final approval/denial of waivers, notifying employees of the final decision on the waivers, maintaining record of waivers, reporting to the Commissioner of Administration any employees not complying with this rule, and withholding job offers to prospective employees failing to comply with this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:247.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

## Chapter 5. Direct Deposit of Vendor Payments and Electronic Receipt of Supporting Data

**§501. Definitions**

*Child Support***C**involuntary employee deduction ordered by a court for payment for support of a child.

*Direct Deposit***C**the automatic deposit, through electronic transfer of funds, of vendor pay into a checking or savings account at a bank, savings and loan, or credit union of their choice.

*Direct Deposit Enrollment Authorization Form***C**the standard form developed by the Division of Administration, Office of State Uniform Payroll, completed by the vendor, giving the Division Of Administration, Office of State Uniform Payroll authority to process vendor specific direct deposit bank account information in the ISIS Human Resource System for the electronic transfer of funds.

*Director***C**the leader responsible for the operation of the Office of State Uniform Payroll.

*Division of Administration (DOA)***C**the Louisiana State Agency under the Executive Department which provides centralized administrative and support services to state agencies as a whole by developing, promoting, and implementing executive policies and legislative mandates.

*Electronic*-Method of automatically transferring data/funds through computers rather than through hard copy.

*Financial Institution*—a bank, savings and loan, or credit union who is established as a receiver of ACH payments.

*Garnishment*-Involuntary employee deduction ordered by a court for payment to a creditor.

*Involuntary Payroll Deduction*—any reduction of net pay which is required by federal or state statute, or by court ordered action.

*ISIS Human Resource System*—the integrated statewide information system administered by the Division of Administration, Office of State Uniform Payroll to provide uniform payroll services to state agencies.

*Levy*—involuntary employee deduction ordered by the court for payment of unpaid federal and/or state taxes.

*Office of State Uniform Payroll (OSUP)*—the section within the Division of Administration primarily responsible for the DOA statewide payroll system and administration of the rules governing state employee payroll deductions.

*Payment Processing Costs*—costs associated with establishing bank accounts and receipt of funds and data electronically, including internal costs and financial institution costs.

*Prospective Vendor*—any company, corporation, or organization which has submitted an application to be approved as a vendor for state payroll deduction or a vendor which has submitted an application for approval of an additional product or a change to an existing product.

*Supporting Data*—information to support the electronic payment, including employees' amounts and other related data.

*Suspense Account*—a bank account established and maintained by the Division of Administration to which funds for vendors not complying with this rule will be deposited until such time vendor forwards direct deposit enrollment authorization form to the Division of Administration, Office of State Uniform Payroll.

*Undue Hardship*—an unwanted burden placed on a vendor as a result of receiving payment and supporting data electronically.

*Vendor*—any company, corporation, or organization approved to participate in payroll deduction through the ISIS Human Resource System.

*Vendor Payment*—payment to vendor for voluntary and involuntary employee payroll deductions with the vendor through the ISIS Human Resource System.

*Voluntary Payroll Deduction*—any reduction of net pay made under written authority of an employee, which is not required by federal or state statute, or by court ordered action and which the employee is free to accept or decline.

*Waiver*—authorization by the Division of Administration, Office of State Uniform Payroll, for an exception to the enforcement of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**§503. Direct Deposit of Vendor Payments and Electronic Receipt of Supporting Data**

A. Effective July 1, 2002, all vendors having either voluntary or involuntary payroll deductions through the ISIS Human Resource System must accept payments for deductions via direct deposit or other approved electronic means and must accept supporting data via an approved electronic means. Vendors must complete an approved direct deposit enrollment authorization form and forward said form to the Office of State Uniform Payroll to establish direct deposit of vendor payments to the vendor's bank account at an approved financial institution. Approved direct deposit enrollment forms can be obtained from the Office of State Uniform Payroll. Prior to a new vendor being approved and established in the ISIS Human Resource System, the Office of State Uniform Payroll must receive a completed approved direct deposit enrollment authorization form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**§505. Request for Direct Deposit Waiver**

A. Vendors may request a waiver of this rule by submitting in writing a formal request to the Director of the Office of State Uniform Payroll. Upon receipt of formal request, the Office of State Uniform Payroll will approve or deny the request for waiver and notify the vendor in writing within 15 days of receipt of request for waiver. Waivers may be approved if the vendor can prove that use of direct deposit and/or electronic receipt of supporting data will cause an undue hardship or will significantly increase payment processing costs.

B. Vendors receiving payments for garnishment, child support, and levies are exempt from the requirements of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**§507. Enforcement of Rule**

A. Checks will not be produced for vendors who do not comply to the provisions of this rule. Vendor payments will be suspended and held in a suspense account until such time that vendor completes an approved direct deposit enrollment authorization form and forwards said form to the Office of State Uniform Payroll.

B. Failure to adhere to this rule will result in termination of payroll deduction privileges.

C. Current and prospective vendors requesting to receive new payroll deductions through the Payroll Deduction Rule (LAC 4:III.Chapter 1) will be denied acceptance for refusal to receive payments via direct deposit or other approved electronic means and receive supporting data via an approved electronic means.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 28:

**Family Impact Statement**

The proposed rule will have an effect on family earnings and family budget for those who do not comply with the requirements of the rule, because payments will be suspended until the employee completes a direct deposit enrollment authorization form and forwards to the Employee Administration office of the employing agency. Employees may also incur minimal financial institution fees for their

bank account of choice. There are no other known impacts on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments to the Director of the Office of State Uniform Payroll, P.O. Box 94095, Baton Rouge, LA 70804-9095. All comments must be received no later than 5:00 p.m., March 20, 2002.

Mark Drennen
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Direct Deposit**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Issuing payroll checks bears the cost of purchasing, processing, and distributing checks. The use of direct deposit could result in cost savings to the state by reducing such operating and processing costs, providing increased control over funds, as well as greatly reduced expense for reconciliation of payroll accounts. If there is 100% compliance with this rule, there will be an estimated $58,000/year savings to the state, within the Office of State Uniform Payroll alone. The positions currently handling this processing will be retained to handle other tasks for the office.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections for state or local governments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

By complying to this rule, employees and vendors may have to pay fees ranging from $0 - $30 per month, depending on what fees are imposed by the financial institution of their choice. There are a number of financial institutions that can be utilized who have minimal or no fees.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule requires agencies to set a policy requiring direct deposit to be a condition of employment. Therefore, prospective employees must enroll in direct deposit in order to be given an offer of employment.

Whitman J. Kling, Jr.
Deputy Undersecretary
0201#035

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Home and Community Based Services Waiver Program
Adult Day Health Care Waiver
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented the Adult Day Health Care Waiver Program effective January 6, 1985. The Adult Day Health Care Waiver was designed to meet the individual needs of aged and functionally impaired adults by providing a variety of health, social and related support services in a protective setting. Candidates who meet all of the eligibility criteria are ranked in the order of the date on record when the candidate initially requested to be evaluated for waiver eligibility and placed on waiting lists maintained by the participating Adult Day Health Care centers. In order to facilitate the efficient management of the waiver waiting list, the department adopted an emergency rule to transfer responsibility for the Adult Day Health Care Waiver waiting lists to the Bureau of Community Supports and Services and establish a single state-wide request for services registry *(Louisiana Register*, volume 27, number 12). The department now proposes to adopt a Rule to continue the provisions contained in the December 3, 2001 Emergency Rule.

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 a positive impact on the family as it will enhance the efficiency of the management of the registry and facilitate the allocation of waiver slots.

**Proposed Rule**

The Department of Health and Hospitals transfers responsibility for the waiting list for the Adult Day Health Care (ADHC) Waiver to the Bureau of Community Supports and Services (BCSS) and consolidates the approximately twenty-seven waiting lists into a centralized state-wide request for services registry that is maintained by region and arranged in order of the date of the initial request. Persons who wish to be added to the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the existing waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of the date on record when the candidate initially requested waiver services. When a candidate is listed on more than one waiting list, the earliest date on record shall be considered the date of initial request.

Interested persons may submit written comments to: Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, February 26, 2002 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.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT**
**FOR ADMINISTRATIVE RULES**
**RULE TITLE: Home and Community Based Services Waiver Program C Adult Day Health Care Waiver C Request for Services Registry**

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 for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that $120 ($60 SGF and $60 FED) will be expended in SFY 2001-02 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 impact federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition or employment. This proposed rule will transfer responsibility for the Adult Day Health Care (ADHC) Waiver waiting lists (approximately 27) to the Bureau of Community Supports and Services and establish a single statewide request for services registry.

Ben A. Bearden
Director
0201#051

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Home and Community Based Services Waiver Program
Elderly and Disabled Adult Waiver
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in August 1993 establishing the Home Care for the Elderly Waiver Program to provide community based services to individuals who are age 65 and older and meet the medical certification and financial eligibility requirements for nursing facility care (*Louisiana Register*, volume 19, number 8). The August 1993 rule was amended by a rule adopted in January 1998 to: 1) redefine the target population served by the Home Care for the Elderly waiver and rename the waiver as the Elderly and Disabled Adult (EDA) waiver; 2) establish an average cost per day limit for each participant of the waiver; 3) establish and define new services; 4) establish methodology for the assignment of slots; and 5) clarify admission and discharge criteria, mandatory reporting requirements and the reimbursement requirement for the prior approval of the plan of care (*Louisiana Register*, volume 24, number 1).

The waiting lists for the EDA waiver are currently maintained by 64 local Council on Aging agencies. In order to facilitate the efficient management of the waiver waiting list, the department adopted an emergency rule to transfer responsibility for the Elderly and Disabled Adult waiver waiting list to the Bureau of Community Supports and Services and establish a single state-wide request for services registry (*Louisiana Register*, volume 27, number 12). The department now proposes to adopt a Rule to continue the provisions contained in the December 3, 2001 Emergency Rule.

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 a positive impact on the family as it will enhance the efficiency of the management of the registry and facilitate the allocation of waiver slots.

**Proposed Rule**

The Department of Health and Hospitals amends the January 1998 Rule to incorporate the transfer of responsibility for the waiting list for the Elderly and Disabled Adult waiver to the Bureau of Community Supports and Services (BCSS) and consolidate the 64 waiting lists into a centralized state-wide request for services registry arranged in order of the date of the initial request. Persons who wish to be placed on the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of the date on record when the candidate initially requested to be evaluated for waiver services.

Interested persons may submit written comments to: Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, February 26, 2002 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.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Home and Community Based Services Waiver Program C Elderly and Disabled Adult Waiver C Request for Services Registry**

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 for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that $160 ($80 SGF and $80 FED) will be expended in SFY 2001-02 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 impact federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition or employment. This proposed rule will transfer responsibility for the Elderly and Disabled Adult (EDA) waiver waiting lists (64) to the Bureau of Community Supports and Services and establish a single statewide request for services registry.

Ben A. Bearden
Director
0201#052

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Home and Community Based Services Waiver Program
Personal Care Attendant Waiver
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in February 1993 to implement a home and community services waiver to provide Personal Care Attendant (PCA) services to individuals who have lost sensory or motor functions and require assistance with personal care needs, ambulation and other related services. Candidates who meet all of the eligibility criteria are ranked by degree of need using the Degree of Need formula. Waiver slots in the three designated service areas are then filled in order of the highest scores as determined by the formula (*Louisiana Register, Volume 19, Number 2)*.

The three PCA waiver waiting lists are currently maintained by the regional PCA waiver provider agencies. In order to facilitate the efficient management of the waiver waiting list, the department adopted an Emergency Rule to transfer responsibility for the Personal Care Attendant (PCA) Waiver waiting list to the Bureau of Community Supports and Services and establish a single state-wide request for services registry *(Louisiana Register*, volume 27, number 12). The department now proposes to adopt a rule to continue the provisions contained in the December 3, 2001 Emergency Rule.

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 a positive impact on the family as it will enhance the efficiency of the management of the registry and facilitate the allocation of waiver slots.

**Proposed Rule**

The Department of Health and Hospitals transfers responsibility for the Personal Care Attendant (PCA) waiver waiting list to the Bureau of Community Supports and Services (BCSS) and consolidates the three waiting lists into a state-wide request for services registry arranged by degree of need and the date of the initial request. Persons who wish to be placed on the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the existing waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of degree of need score and the date on record when the candidate initially requested waiver services.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, 446 North Twelfth Street, Baton Rouge, LA 70802-4613. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for Tuesday, February 26, 2002 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.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Home and Community Based Services Waiver Program C Personal Care Attendant Waiver C Request for Services Registry**

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 for SFY 2001-02, 2002-03, and 2003-04. It is anticipated that $160 ($80 SGF and $80 FED) will be expended in SFY 2001-02 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 not impact federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition or employment. This proposed rule will transfer responsibility for the Personal Care Attendant (PCA) Waiver waiting lists (3) to the Bureau of Community Supports and Services and establish a single statewide request for services registry.

Ben A. Bearden
Director
0201#055

H. Gordon Monk
Staff Director
Legislative Fiscal Office

## NOTICE OF INTENT

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

Medicaid Eligibility
Breast and Cervical Cancer Treatment Program

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Breast and Cervical Cancer Prevention and Treatment Act of 2000 (BCCPTA) amended Title XIX of the Social Security Act to give states enhanced matching funds to provide Medicaid eligibility to a new group of individuals previously not eligible under the program. The new option allows states to provide full Medicaid benefits to uninsured women under age 65 who are identified through the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program and are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer.

In compliance with the Breast and Cervical Cancer Prevention and Treatment Act of 2000, the bureau adopted an Emergency Rule to establish an optional eligibility group to provide Medicaid eligibility to women who are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer *(Louisiana Register*, volume 27, number 12). The bureau now proposes to adopt a Rule to continue the provisions contained in the January 1, 2002 Emergency Rule.

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 a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972. The proposed Rule will provide access to medical services for women who are in need of treatment for breast or cervical cancer and who would otherwise not be able to receive these services.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes an optional eligibility group to provide Medicaid eligibility to women who are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer.

**Eligibility Criteria**

Regular income and resource criteria are not applicable for Medicaid benefits under this optional eligibility group. However, the applicant's income must be under 250 percent of the federal poverty level in order to qualify for screening under the Centers for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program.

Women must meet all of the following criteria in order to be considered for the optional eligibility group:

1. the woman must have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program and found to need treatment for either breast or cervical cancer, including pre-cancerous conditions and early stage cancer; and
2. she must be uninsured (or if insured, has coverage that does not include treatment of breast or cervical cancer) and ineligible under any of the mandatory Medicaid eligibility groups; and
3. she must be under age 65.

**Coverage**

A woman who becomes eligible under this new optional category is entitled to full Medicaid coverage. Coverage is not limited to treatment of breast and cervical cancer.

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.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, February 26, 2002 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.

David W. Hood
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
## RULE TITLE: Medicaid Eligibility C Breast and Cervical Cancer Treatment Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately $344,863 for SFY 2001-02, $846,141 for SFY 2002-03, and $1,028,404 for SFY 2003-04. It is anticipated that $160 ($80

SGF and $80 FED) will be expended in SFY 2001-2002 for the state's administrative expense for promulgation of this proposed rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately $1,316,904 for SFY 2001-02, $3,328,209 for SFY 2002-03, and $4,045,124 for SFY 2003-04.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule will establish an optional eligibility group to provide full Medicaid benefits to uninsured women under age 65 (approximately 150-200 per year) who are identified through the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program and are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer. Implementation of this proposed rule will increase payments to providers of Medicaid services by approximately $1,661,607 for SFY 2001-02, $4,174,350 for SFY 2002-03, and $5,073,528 for SFY 2003-04.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

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| Ben A. Bearden | H. Gordon Monk |
| Director | Staff Director |
| 0201#053 | Legislative Fiscal Office |

## NOTICE OF INTENT

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

Medicaid Eligibility
Incurred Medical Expenses

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 *(Louisiana Register*, volume 22, number 5). Section I of the Medicaid Eligibility Manual explains the eligibility factors used to determine Medicaid eligibility, including consideration of medical expenses incurred by long term care facility residents as allowable deductions for the purpose of determining patient liability. In compliance with a recent clarification of federal regulations, the bureau has determined it is necessary to establish criteria governing allowable and non-allowable deductions for medical expenses incurred by long term care facility residents. Therefore, the bureau proposes to adopt the following rule to amend the provisions of the May 20, 1996 Rule governing deductions for incurred medical expenses that may be considered in the determination of patient liability.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, and autonomy as described in R.S. 49:972.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the May 20, 1996 Rule governing the treatment of medical expenses incurred by long term care facility residents in the determination of patient liability. Deductions for incurred medical expenses must be budgeted, just as income is budgeted, in the month that it is incurred.

**Criteria for Allowable Deductions**

The following criteria apply to all incurred medical expenses.

1. The deduction must be for an expense incurred by a long term care facility resident who is or was eligible for Medicaid vendor payment to the long term care facility during the month the expense was incurred.

2. Each deduction must be for a service or item prescribed by a medical professional (e.g., a physician, a dentist, optometrist, etc.) as medically necessary, and approved by the attending physician to be included as part of the facility's plan of care for the resident.

3. Documentation and receipts for the medical expenses shall contain the name of the recipient, the date of the purchase and itemization of the purchase.

**Non-Allowable Deductions**

Deductions shall not be allowed for the following incurred medical expenses:

1. medical expenses incurred during a month in which the individual was not a resident of a long term care facility and not eligible for vendor payment to a facility;

2. prescription drugs not covered under the Medicaid Program, unless the prescribing physician has been notified that the drug is not covered by the Medicaid Program and has stated that an equivalent alternative that is covered cannot be prescribed;

3. expenses which are payable under Medicaid, except when documentation is presented to verify that the expense was denied by Medicaid due to service limitations;

4. expenses for services, equipment and supplies denied by Medicare or Medicaid as not medically necessary;

5. expenses for services, equipment or supplies that require prior authorization for Medicaid payment. Requests must be submitted to the Prior Authorization Unit for consideration;

6. expenses for services, equipment or supplies provided as part of the long term care facility reimbursement rate (i.e., personal care needs, medical supplies, transportation, etc.);

7. expenses for cosmetics and over-the-counter skin care products;

8. expenses for supplies purchased for the convenience of the long term care facility or family (i.e., diapers);

9. taxes on expenditures;

10. cosmetic or elective procedures (i.e., face lifts or liposuction); or

11. expenses for reserving or holding a nursing facility bed when the resident's absence has exceeded Medicaid's

bed-hold limit and all hospital or home leave days have been exhausted.

**Deduction Limitations**

The following deduction limitations apply to those medically necessary incurred expenses cited.

1. Dental Services. Deductions for dental services shall be limited to the maximum allowed under the established fee schedule that will be updated annually. Denture and denture repairs are subject to the service limits of the Adult Denture Program, unless exceptional medical necessity can be demonstrated.

2. Eyeglasses. Deductions for eyeglasses not otherwise covered by the Medicaid Program are limited to $150 annually.

3. Hearing Aids. A one-time deduction not to exceed $600 is allowed.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, February 26, 2002 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.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Medicaid Eligibility C Incurred Medical Expenses**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately $217,987 for SFY 2001-02, $1,145,992 for SFY 2002-03, and $1,180,372 for SFY 2003-04. It is anticipated that $200 ($100 SGF and $100 FED) will be expended in SFY 2001-2002 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately $517,324 for SFY 2001-02, $2,720,379 for SFY 2002-03, and $2,801,990 for SFY 2003-04.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Deductions for medical expenses incurred by long term care facility residents will be considered as allowable for the purpose of determining patient liability relative to the total amount to be paid to the long term care facility. Implementation of this proposed rule will increase expenditures in the long term care program by approximately $735,111 for SFY 2001-02, $3,866,371 for SFY 2002-03, and $3,982,362 for SFY 2003-04.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

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|---|---|
| Ben A. Bearden | H. Gordon Monk |
| Director | Staff Director |
| 0201#054 | Legislative Fiscal Office |

**NOTICE OF INTENT**

**Department of Insurance**
**Office of the Commissioner**
Regulation 77C Medical Necessity Review Organizations
(LAC 37:XIII.Chapter 62)

In accordance with the provisions of. R.S. 49:953 of the Administrative Procedure Act and R.S. 22:3090, the Department of Insurance is proposing to adopt the following Rule regarding standards for determining the necessity of medical care or services recommended by health care providers. This rule is necessary to establish reasonable requirements for limiting covered services included in a policy or contract of insurance coverage that do not misrepresent the benefits, advantages, conditions, or terms of the policy issued, or to be issued, based on medical necessity determinations. This rule establishes the statutory requirements for health insurance issuers who seek to make such limitations in products sold in this state and establish the standards for Medical Necessity Review Organizations seeking licensure under Title 22 of the Louisiana Revised Statutes of 1950.

**Title 37**
**INSURANCE**
**Part XIII. Regulations**
**Chapter 62. Regulation 77C Medical Necessity Review Determinations**

**§6201. Purpose**

A. The purpose of this regulation is to enforce the statutory requirements of Title 22 of the Louisiana Revised Statutes of 1950 that require health insurance issuers who seek to establish exception criteria or limitations on covered benefits that are otherwise offered and payable under a policy or certificate of coverage sold in this state, by requiring a medical necessity determination to be made by the health insurance issuer. The statutory requirements also apply to any health benefit plan that establishes exception criteria or limitations on covered benefits that are otherwise offered and payable under a non-federal government benefit plan. Additionally, the statute establishes a process for Medical Necessity Review Organizations to qualify for state licensure and Independent Review Organizations to become certified by the Department of Insurance. The statutory requirements establish the intent of the legislature to assure licensed health insurance issuers and non-federal government benefit plans meet minimum quality standards and do not utilize any requirement that would act to impinge on the ability of insureds or government employees to receive appropriate medical advice and/or treatment from a health care professional. This Regulation has no effect on the statutory requirements of R.S. 22:657. Emergency medical conditions as defined in R.S. 22:657 shall be covered and payable as provided therein.

This regulation implements the statutory requirements of R.S. §§22:2021, and Chapter 7 of Title 22 of the Louisiana Revised Statutes regarding the use of medical necessity to limit stated benefits in a fully insured health policy or HMO certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6203. Definitions**

*Adverse Determination***C**a determination that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and denied, reduced, or terminated by a reviewer based on medical necessity, appropriateness, health care setting, level of care, or effectiveness.

*Ambulatory Review***C**a review of health care services performed or provided in an outpatient setting.

*Appropriate Medical Information***C**all outpatient and inpatient medical records that are pertinent to the evaluation and management of the covered person and that permit the Medical Necessity Review Organization to determine compliance with the applicable clinical review criteria. In the review of coverage for particular services, these records may include, but are not necessarily limited to, one or more of the following portions of the covered person's medical records as they relate directly to the services under review for medical necessity: admission history and physical examination report, physician's orders, progress notes, nursing notes, operative reports, anesthesia records, hospital discharge summary, laboratory and pathology reports, radiology or other imaging reports, consultation reports, emergency room records, and medication records.

*Authorized Representative***C**a person to whom a covered person has given written consent to represent the covered person in an internal or external review of an adverse determination of medical necessity. *Authorized Representative* may include the covered person's treating provider, if the covered person appoints the provider as his authorized representative and the provider agrees and waives in writing, any right to payment from the covered person other than any applicable copayment or coinsurance amount. In the event that the service is determined not to be medically necessary by the MNRO/IRO, and the covered person or his authorized representative thereafter requests the services, nothing shall prohibit the provider from charging the provider's usual and customary charges for all MNRO/IRO determined non-medically necessary services provided when such requests are in writing.

*Case Management***C**a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

*Certification* or *Certify***C**a determination by a reviewer regarding coverage of an admission, continued stay, or other health care service for the purpose of determining medical necessity, appropriateness of the setting, or level of care.

*Clinical Peer***C**a physician or other health care professional who holds an unrestricted license in the same or an appropriate specialty that typically manages the medical condition, procedure, or treatment under review. Non-physician practitioners, including but not limited to nurses, speech and language therapists, occupational therapists, physical therapists, and clinical social workers, are not considered to be clinical peers and may not make adverse determinations of proposed actions of physicians (medical doctors shall be clinical peers of medical doctors, etc.).

*Clinical Review Criteria***C**the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a reviewer to determine the necessity and appropriateness of covered health care services.

*Commissioner***C**the commissioner of insurance.

*Concurrent Review***C**a review of medical necessity, appropriateness of care, or level of care conducted during a patient's stay or course of treatment.

*Covered Benefits* or *Benefits***C**those health care services to which a covered person is entitled under the terms of a health benefit plan.

*Covered Person***C**a policyholder, subscriber, enrollee, or other individual covered under a policy of health insurance or HMO subscriber agreement.

*Discharge Planning***C**the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility.

*Disclose***C**to release, transfer, or otherwise divulge protected health information to any individual, entity, or person other than the individual who is the subject of the protected health information.

*Emergency Medical Condition***C**a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. placing the health of the individual in serious jeopardy;
2. with respect to a pregnant woman, placing the health of the woman or her unborn child in serious jeopardy;
3. serious impairment to bodily function; or
4. serious dysfunction of any bodily organ or part.

*Entity***C**an individual, person, corporation, partnership, association, joint venture, joint stock company, trust, unincorporated organization, any similar entity, agent, or contractor, or any combination of the foregoing.

*External Review Organization***C**an independent review organization that conducts independent external reviews of adverse determinations and final adverse determinations and whose accreditation or certification has been reviewed and approved by the Department of Insurance.

*Facility***C**an institution providing health care services or a health care setting, including but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing facilities, inpatient hospice facilities, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

*Final Adverse Determination***C**an adverse determination that has been upheld by a reviewer at the completion of the medical necessity review organization's internal review process as set forth in this Chapter.

*Health Benefit Plan***C**group and individual health insurance coverage, coverage provided under a group health

plan, or coverage provided by a nonfederal governmental plan, as those terms are defined in R.S. 22:250.1. *Health Benefit Plan* shall not include a plan providing coverage for excepted benefits as defined in R.S. 22:250.1(3).

*Health Care Professional*—a physician or other health care practitioner licensed, certified, or registered to perform specified health services consistent with state law.

*Health Care Provider* or *Provider*—a health care professional, the attending, ordering, or treating physician, or a facility.

*Health Care Services*—services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

*Health Information*—information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to any of the following:

1. the past, present, or future physical, mental, or behavioral health or condition of a covered person or a member of the covered person's family;
2. the provision of health care services to a covered person; or
3. payment for the provision of health care services to a covered person.

*Health Insurance Coverage*—benefits consisting of medical care provided or arranged for directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer.

*Health Insurance Issuer*—an insurance company, including a health maintenance organization, as defined and licensed pursuant to Part XII of Chapter 2 of this Title, unless preempted as an employee benefit plan under the Employee Retirement Income Security Act of 1974.

*Medical Necessity Review Organization* or *MNRO*—a health insurance issuer or other entity licensed or authorized pursuant to this Chapter to make medical necessity determinations for purposes other than the diagnosis and treatment of a medical condition.

*Prospective Review*—a review conducted prior to an admission or a course of treatment.

*Protected Health Information*—health information that either identifies a covered person who is the subject of the information or with respect to which there is a reasonable basis to believe that the information could be used to identify a covered person.

*Retrospective Review*—a review of medical necessity conducted after services have been provided to a patient, but shall not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

*Second Opinion*—an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health service to assess the clinical necessity and appropriateness of the initial proposed health service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6205. Authorization or Licensure as an MNRO**

A. No health insurance issuer or health benefit plan, as defined in this chapter, shall act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar medical determinations unless authorized to act as an MNRO by the commissioner as provided in this Chapter. Benefits covered under a health benefit plan sold or in effect in this state on or after January 1, 2001 shall be limited, excluded, or excepted from coverage under any medical necessity determination requirement, appropriateness of care determination, level of care needed, or any other similar determination only when such determination is made by an authorized or licensed MNRO as provided in this Chapter.

B. No entity acting on behalf of or as the agent of a health insurance issuer may act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations unless licensed as an MNRO by the commissioner as provided in this Chapter.

C. Any other entity may apply for and be issued a license under this Chapter to act as an MNRO for the purposes of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations on behalf of a health benefit plan.

D. Any entity licensed or authorized as an MNRO shall be exempt from the requirements of R.S. 40:2721 through 2736. The licensure, authorization, or certification of any entity as an MNRO or independent or external review organization shall be effective beginning on the date of first application for all entities who receive formal written authorization, licensure, or certification by the Commissioner of Insurance. This provision shall remain in effect until December 31, 2001. Any application filed after December 31, 2001 shall become effective upon final approval by the Department of Insurance and not upon date of first application. Therefore any application submitted and filed after December 31, 2001, the licensure, authorization or certification of an entity as an MNRO or independent or external review organization shall be effective upon the date final approval is granted by the Commissioner of Insurance.

E. An integrated health care network or other entity contracting with a health insurance issuer for provision of covered services under a risk sharing arrangement, shall be allowed to make initial adverse medical necessity determinations provided the health insurance issuer remains responsible for provision of internal and external review requirements and has submitted the information required under Paragraph B.5 of Section 6207 for review and approval. In such instances, a covered person's request for an internal or external appeal of an adverse determination shall not require concurrence by a provider reimbursed under a risk sharing arrangement with the health insurance issuer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following

provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6207. Procedure for Application to act as an MNRO**

A. Any applicant for licensure other than a health insurance issuer shall submit an application to the commissioner and pay an initial licensure fee as specified in §6211.D. The application shall be on a form and accompanied by any supporting documentation required by the commissioner and shall be signed and verified by the applicant. The information required by the application shall include:

1. the name of the entity operating as an MNRO and any trade or business names used by that entity in connection with making medical necessity determinations;

2. the names and addresses of every officer and director of the entity operating as an MNRO, as well as the name and address of the corporate officer designated by the MNRO as the corporate representative to receive, review, and resolve all grievances addressed to the MNRO;

3. the name and address of every person owning, directly or indirectly, five percent or more of the entity operating as an MNRO;

4. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

5. a general description of the operation of the MNRO, which includes a statement that the MNRO does not engage in the practice of medicine or acts to impinge or encumber the independent medical judgment of treating physicians or health care providers;

6. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. (Such program description shall evidence compliance with requirements of Section 6213 of this Chapter);

7. a sample copy of any contract, absent fees charged, with a health insurance issuer, nonfederal government health benefit plan, or other group health plan for making determinations of medical necessity;

8. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations; and

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character;

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

B. A health insurance issuer holding a valid certificate of authority to operate in this state may be authorized to act as an MNRO under the requirements of this Chapter following submission to the commissioner of appropriate documentation for review and approval that shall include, but need not be limited, to the following:

1. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

2. a general description of the operation of the MNRO which includes a statement that the MNRO does not engage in the practice of medicine or act to impinge upon or encumber the independent medical judgment of treating physicians or health care providers;

3. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. (Such program description shall evidence compliance with requirements of Section 6213 of this Chapter);

4. a sample copy of any contract, absent fees charged, with another health insurance issuer for making determinations of medical necessity;

5. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations;

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character; and

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and, 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6211. Expiration and Renewal of License for Entities other than Health Insurance Issuers**

A. Licensure pursuant to this Chapter shall expire two years from the date approved by the commissioner unless the license is renewed for a two-year term as provided in this Section.

B. Before a license expires, it may be renewed for an additional two-year term if the applicant pays a renewal fee as provided in this Section and submits to the commissioner a renewal application on the form that the commissioner requires.

C. The renewal application required by the commissioner shall include, but need not be limited to, the information required for an initial application.

D. The fee for initial licensure and the fee for renewal of licensure shall each be $1,500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014 and 3090, to implement and enforce the following

provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6213. Scope and Content of Medical Necessity Determination Process**

A. An MNRO shall implement a written medical necessity determination program that describes all review activities performed for one or more health benefit plans. The program shall include the following:

1. the methodology utilized to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services;

2. data sources and clinical review of criteria used in decision-making. The appropriateness of clinical review criteria shall be fully documented;

3. the process for conducting appeals of adverse determinations including informal reconsiderations;

4. mechanisms to ensure consistent application of review criteria and compatible decisions;

5. data collection processes and analytical methods used in assessing utilization of health care services;

6. provisions for assuring confidentiality of clinical and proprietary information;

7. the organizational structure, including any review panel or committee, quality assurance committee, or other committee that periodically accesses health care review activities and reports to the health benefit plan;

8. the medical director's responsibilities for day-to-day program management;

9. any quality management program utilized by the MNRO.

B. An MNRO shall file with the commissioner an annual summary report of its review program activities that includes a description of any substantive changes that have been implemented since the last annual report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6215. Medical Necessity Review Organization Operational Requirements**

A. An MNRO shall use documented clinical review criteria that are based on sound clinical evidence. Such criteria shall be evaluated at least annually and updated if necessary to assure ongoing efficacy. An MNRO may develop its own clinical review criteria or it may purchase, license or contract for clinical review criteria from qualified vendors. An MNRO shall make available its clinical review criteria upon request to the commissioner who shall be authorized to request affirmation of such criteria from other appropriate state regulatory agencies.

B. An MNRO shall have a medical director who shall be a duly licensed physician. The medical director shall administer the program and oversee all adverse review decisions. Adverse determinations shall be made only by a duly licensed physician or clinical peer. An adverse determination made by an MNRO in the second level review shall become final only when a clinical peer has evaluated and concurred with such adverse determination.

C. An MNRO shall issue determination decisions in a timely manner pursuant to the requirements of this Chapter. At the time of the request for review, an MNRO shall notify the requestor of all documentation required to make a medical review determination. The requestor may include the covered person, an authorized representative, or a provider. In the event that the MNRO determines that additional information is required, it shall notify the requestor by telephone, within one workday of such determination, to request any additional appropriate medical information required. An MNRO shall obtain all information required to make a medical necessity determination, including pertinent clinical information, and shall have a process to ensure that qualified health care professionals performing medical necessity determinations apply clinical review criteria consistently.

D. At least annually, an MNRO shall routinely assess the effectiveness and efficiency of its medical necessity determination program and report any deficiencies or changes to the commissioner. Deficiencies shall include complaint investigations by the department or grievances filed with the MNRO that prompted the MNRO to change procedures or protocols.

E. An MNRO's data systems shall be sufficient to support review program activities and to generate management reports to enable the health insurance issuer or other contractor to monitor its activities.

F. Health insurance issuers who delegate any medical necessity determination functions to an MNRO shall be responsible for oversight, which shall include, but not be limited to, the following:

1. a written description of the MNRO's activities and responsibilities, including reporting requirements;

2. evidence of formal approval of the medical necessity determination program by the health insurance issuer;

3. a process by which the health insurance issuer monitors or evaluates the performance of the MNRO.

G. Health insurance issuers who perform medical necessity determinations shall coordinate such program with other medical management activities conducted by the health insurance issuer, such as quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing member satisfaction, and risk management.

H. An MNRO shall provide health care providers with access to its review staff by a toll-free number that is operational for any period of time that an authorization, certification, or approval of coverage is required.

I. When conducting medical necessity determinations, the MNRO shall request only the information necessary to certify an admission to a facility, procedure or treatment, length of stay, frequency, level of care or duration of health care services.

J. Compensation to individuals participating in a medical necessity determination program shall not contain incentives, direct or indirect, for those individuals to make inappropriate or adverse review determinations. Compensation to any such individuals shall not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

K. An adverse determination shall not be based on the outcome of care or clinical information not available at the time the certification was made, regardless of whether the covered person or provider assumes potential liability for the cost of such care while awaiting a coverage determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6217. Procedures for Making Medical Necessity Determinations**

A. An MNRO shall maintain written procedures for making determinations and for notifying covered persons and providers and other authorized representatives acting on behalf of covered persons of its decisions.

B.1. In no less than eighty percent of initial determinations, an MNRO shall make the determination within two working days of obtaining any appropriate medical information that may be required regarding a proposed admission, procedure, or service requiring a review determination. In no instance shall any determination of medical necessity be made later than thirty days from receipt of the request unless the patient's physician or other authorized representative has agreed to an extension.

2. In the case of a determination to certify a nonemergency admission, procedure, or service, the MNRO shall notify the provider rendering the service within one work day of making the initial certification and shall provide documented confirmation of such notification to the provider within two working days of making the initial certification.

3. In the case of an adverse determination of a nonemergency admission, the MNRO shall notify the provider rendering the service within one workday of making the adverse determination and shall provide documented confirmation of the notification to the provider within two working days of making the adverse determination.

C.1. For concurrent review determinations of medical necessity, an MNRO shall make such determinations within one working day of obtaining the results of appropriate medical information that may be required.

2. In the case of a determination to certify an extended stay or additional services, the MNRO shall notify the provider rendering the service within one working day of making the certification and shall provide documented confirmation to the provider within two working days of the authorization. Such documented notification shall include the number of intended days or next review date and the new total number of days or services approved.

3. In the case of an adverse determination, the MNRO shall notify the provider rendering the service within one working day of making the adverse determination and shall provide documented notification to the provider within one workday of such notification. The service shall be authorized and payable by the health insurance issuer without liability, subject to the provisions of the policy or subscriber agreement, until the provider has been notified in writing of the adverse determination. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider unless notified of such liability in advance.

D.1. For retrospective review determinations, the MNRO shall make the determination within 30 working days of obtaining the results of any appropriate medical information that may be required, but in no instance later than 180 days from the date of service. The MNRO shall not subsequently retract its authorization after services have been provided or reduce payment for an item or service furnished in reliance upon prior approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider or unless the coverage was duly canceled for fraud, misrepresentation, or nonpayment of premiums.

2 In the case of an adverse determination, the MNRO shall notify in writing the provider rendering the service and the covered person within five working days of making the adverse determination.

E. A written notification of an adverse determination shall include the principal reason or reasons for the determination, the instructions for initiating an appeal or reconsideration of the determination, and the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination. An MNRO shall provide the clinical rationale in writing for an adverse determination, including the clinical review criteria used to make that determination, to any party who received notice of the adverse determination and who follows the procedures.

F. An MNRO shall have written procedures listing the health or appropriate medical information required from a covered person or health care provider in order to make a medical necessity determination. Such procedures shall be given verbally to the covered person or health care provider when requested. The procedures shall also outline the process to be followed in the event that the MNRO determines the need for additional information not initially requested.

G. An MNRO shall have written procedures to address the failure or inability of a provider or a covered person to provide all necessary information for review. In cases where the provider or a covered person will not release necessary information, the MNRO may deny certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6219. Informal Reconsideration**

A. In a case involving an initial determination or a concurrent review determination, an MNRO shall give the provider rendering the service an opportunity to request, on behalf of the covered person, an informal reconsideration of an adverse determination by the physician or clinical peer making the adverse determination. Allowing a 10-day period following the date of the adverse determination for requesting an informal reconsideration shall be considered reasonable.

B. The informal reconsideration shall occur within one working day of the receipt of the request and shall be conducted between the provider rendering the service and the MNRO's physician authorized to make adverse determinations or a clinical peer designated by the medical

director if the physician who made the adverse determination cannot be available within one working day.

C. If the informal reconsideration process does not resolve the differences of opinion, the adverse determination may be appealed by the covered person or the provider on behalf of the covered person. Informal reconsideration shall not be a prerequisite to a standard appeal or an expedited appeal of an adverse determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6221. Appeals of Adverse Determinations; Standard Appeals**

A. An MNRO shall establish written procedures for a standard appeal of an adverse determination, which may also be known as a first level internal appeal. Such procedures shall be available to the covered person and to the provider acting on behalf of the covered person. Such procedures shall provide for an appropriate review panel for each appeal that includes health care professionals who have appropriate expertise. Allowing a 60-day period following the date of the adverse determination for requesting a standard appeal shall be considered reasonable.

B. For standard appeals, a duly licensed physician shall be required to concur with any adverse determination made by the review panel.

C. The MNRO shall notify in writing both the covered person and any provider given notice of the adverse determination, of the decision within thirty working days following the request for an appeal, unless the covered person or authorized representative and the MNRO mutually agree that a further extension of the time limit would be in the best interest of the covered person. The written decision shall contain the following:

1. the title and qualifying credentials of the physician affirming the adverse determination;

2. a statement of the reason for the covered person's request for an appeal;

3. an explanation of the reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the MNRO's position;

4. if applicable, a statement including the following:

a. a description of the process to obtain a second level review of a decision;

b. the written procedures governing a second level review, including any required time frame for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6223. Second Level Review**

A.. An MNRO shall establish a second level review process to give covered persons who are dissatisfied with the first level review decision the option to request a review at which the covered person has the right to appear in person before authorized representatives of the MNRO. An MNRO shall provide covered persons with adequate notice of this option, as described in Section 6221.C. Allowing a 30-day period following the date of the notice of an adverse standard appeal decision shall be considered reasonable.

B. An MNRO shall conduct a second level review for each appeal. Appeals shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination. A majority of any review panel used shall be comprised of persons who were not previously involved in the appeal. However, a person who was previously involved with the appeal may be a member of the panel or appear before the panel to present information or answer questions. The panel shall have the legal authority to bind the MNRO and the health insurance issuer to the panel's decision.

C. An MNRO shall ensure that a majority of the persons reviewing a second level appeal are health care professionals who have appropriate expertise. An MNRO shall issue a copy of the written decision to a provider who submits an appeal on behalf of a covered person. In cases where there has been a denial of service, the reviewing health care professional shall not have a material financial incentive or interest in the outcome of the review.

D. The procedures for conducting a second level review shall include the following.

1. The review panel shall schedule and hold a review meeting within 45 working days of receivinga request from a covered person for a second level review. The review meeting shall be held during regular business hours at a location reasonably accessible to the covered person. In cases where a face-to-face meeting is not practical for geographic reasons, an MNRO shall offer the covered person and any provider given a notice of adverse determination the opportunity to communicate with the review panel, at the MNRO's expense, by conference call, video conferencing, or other appropriate technology. The covered person shall be notified of the time and place of the review meeting in writing at least 15 working days in advance of the review date; such notice shall also advise the covered person of his rights as specified in Paragraph three of this Subsection. The MNRO shall not unreasonably deny a request for postponement of a review meeting made by a covered person.

2. Upon the request of a covered person, an MNRO shall provide to the covered person all relevant information that is not confidential or privileged.

3. A covered person shall have the right to the following:

a. attend the second level review;

b. present his case to the review panel;

c. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting;

d. ask questions of any representative of the MNRO.

4. The covered person's right to a fair review shall not be made conditional on the covered person's appearance at the review.

5. For second level appeals, a duly licensed and appropriate clinical peer shall be required to concur with any adverse determination made by the review panel.

6. The MNRO shall issue a written decision to the covered person within five working days of completing the review meeting. The decision shall include the following:

a. the title and qualifying credentials of the appropriate clinical peer affirming an adverse determination;

b. a statement of the nature of the appeal and all pertinent facts;

c. the rationale for the decision;

d. reference to evidence or documentation used in making that decision;

e. the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination;

f. notice of the covered person's right to an external review, including the following:

i. a description of the process to obtain an external review of a decision;

ii. the written procedures governing an external review, including any required time frame for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6225. Request for External Review**

A. Each health benefit plan shall provide an independent review process to examine the plan's coverage decisions based on medical necessity. A covered person, with the concurrence of the treating health care provider, may make a request for an external review of a second level appeal adverse determination.

B. Except as provided in this Subsection, an MNRO shall not be required to grant a request for an external review until the second level appeal process as set forth in this Chapter has been exhausted. A request for external review of an adverse determination may be made before the covered person has exhausted the MNRO's appeal, if any of the following circumstances apply.

1. The covered person has an emergency medical condition, as defined in this Chapter.

2. The MNRO agrees to waive the requirements for the first level appeal, the second level appeal, or both.

C. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.1 of this Section, the covered person's treating health care provider may request an expedited external review. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.2 of this Section, a standard external review shall be performed.

D. Nothing in this Section shall prevent an MNRO from establishing an appeal process, approved by the commissioner, that provides persons who are dissatisfied with the first level review decision an external review in lieu of requiring a second level review prior to requesting such external review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6227. Standard External Review**

A. Within sixty days after the date of receipt of a notice of a second level appeal adverse determination, thecovered person whose medical care was the subject of such determination may, with the concurrence of the treating health care provider, file a request for an external review with the MNRO. Within seven days after the date of receipt of the request for an external review, the MNRO shall provide the documents and any information used in making the second level appeal adverse determination to its designated independent review organization. The independent review organization shall review all of the information and documents received and any other information submitted in writing by the covered person or the covered person's health care provider. The independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;

2. the treating health care professional's recommendation;

3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, covered person, or the covered person's treating provider;

4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations;

5. any applicable clinical review criteria developed exclusively and used by MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation unless the criteria had been reviewed and certified by the appropriate licensing board of this state.

B. The independent review organization shall provide notice of its recommendation to the MNRO, the covered person or his authorized representative and the covered person's health care provider within 30 days after the date of receipt of the second level determination information subject to an external review, unless a longer period is agreed to by all parties.

AUTHORITY NOTE: Promulgated in accordance with La. R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6229. Expedited Appeals**

A. An MNRO shall establish written procedures for the expedited appeal of an adverse determination involving a situation where the time frame of the standard appeal would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. An expedited appeal shall be available to and may be initiated by the covered person, with the consent of the treating health care professional, or the provider acting on behalf of the covered person.

B. Expedited appeals shall be evaluated by an appropriate clinical peer or peers in the same or a similar specialty as would typically manage the case under review. The clinical peer or peers shall not have been involved in the initial adverse determination.

C. An MNRO shall provide an expedited appeal to any request concerning an admission, availability of care,

continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility. Such emergency services may include services delivered in the emergency room, during observation, or other setting that resulted in direct admission to a facility.

D. In an expedited appeal, all necessary information, including the MNRO's decision, shall be transmitted between the MNRO and the covered person, or his authorized representative, or the provider acting on behalf of the covered person by telephone, telefacsimile, or any other available expeditious method.

E. In an expedited appeal, an MNRO shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the appeal is commenced. If the expedited appeal is a concurrent review determination, the service shall be authorized and payable, subject to the provisions of the policy or subscriber agreement, until the provider has been notified of the determination in writing. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider until documented notification of such liability is provided to the covered person.

F. An MNRO shall provide written confirmation of its decision concerning an expedited appeal within two working days of providing notification of that decision if the initial notification was not in writing. The written decision shall contain the information specified in R.S. 22:3079.C(1) through (3).

G. An MNRO shall provide reasonable access, within a period of time not to exceed one workday, to a clinical peer who can perform the expedited appeal.

H In any case where the expedited appeal process does not resolve a difference of opinion between the MNRO and the covered person or the provider acting on behalf of the covered person, such provider may request a second level appeal of the adverse determination.

I. An MNRO shall not provide an expedited appeal for retrospective adverse determinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6231. Expedited External Review of Urgent Care Requests**

A. At the time that a covered person receives an adverse determination involving an emergency medical condition of the covered person being treated in the emergency room, during hospital observation, or as a hospital inpatient, the covered person's health care provider may request an expedited external review. Approval of such requests shall not unreasonably be withheld.

B. For emergency medical conditions, the MNRO shall provide or transmit all necessary documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or any other available expeditious method.

C. In addition to the documents and information provided or transmitted, the independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;

2. the treating health care professional's recommendation;

3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, the covered person, or the covered person's treating provider;

4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations.;

5. Any applicable clinical review criteria developed exclusively and used by the MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation, unless the criteria had been reviewed and certified by the appropriate state licensing board of this state.

D. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization shall do the following:

1. make a decision to uphold or reverse the adverse determination;

2. notify the covered person, the MNRO, and the covered person's health care provider of the decision. Such notice shall include the principal reason or reasons for the decision and references to the evidence or documentation considered in making the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6233. Binding Nature of External Review Decisions**

A. Coverage for the services required under this Chapter shall be provided subject to the terms and conditions generally applicable to benefits under the evidence of coverage under a health insurance policy or HMO subscriber agreement. Nothing in this Chapter shall be construed to require payment for services that are not otherwise covered pursuant to the evidence of coverage under the health insurance policy or HMO subscriber agreement or otherwise required under any applicable state or federal law.

B. An external review decision made pursuant to this Chapter shall be binding on the MNRO and on any health insurance issuer or health benefit plan that utilizes the MNRO for making medical necessity determinations. No entity shall hold itself out to the public as following the standards of a licensed or authorized MNRO that does not adhere to all requirements of this Chapter including the binding nature of external review decisions.

C. An external review decision shall be binding on the covered person for purposes of determining coverage under a health benefit plan that requires a determination of medical necessity for a medical service to be covered.

D. A covered person or his representatives, heirs, assigns, or health care providers shall have a cause of action for benefits or damages against an MNRO, health insurance issuer, health benefit plan, or independent review organization for any action involving or resulting from a decision made pursuant to this Chapter if the determination or opinion was rendered in bad faith or involved negligence,

gross negligence, or intentional misrepresentation of factual information about the covered person's medical condition. Causes of action for benefits or damages for actions involving or resulting from a decision made pursuant to this Chapter shall be limited to the party acting in bad faith, or involved in negligence, gross negligence or intentional misrepresentation of factual information about the covered person's medical condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6235. Minimum Qualifications for Independent Review Organizations**

A. The licensure, authorization, or certification of any entity as an MNRO or independent or external review organization shall be effective beginning on the date of first application for all entities who receive formal written authorization, licensure, or certification by the Commissioner of Insurance. This provision shall remain in effect until December 31, 2001. Any application filed after December 31, 2001 shall become effective upon final approval by the Department of Insurance and not upon date of first application. Therefore any application submitted and filed after December 31, 2001, the licensure, authorization or certification of an entity as an MNRO or independent or external review organization shall be effective upon the date final approval is granted by the Commissioner of Insurance. To qualify to conduct external reviews for an MNRO, an independent review organization shall meet the following minimum qualifications:

1. develop written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process that include, at a minimum, the following:

a. procedures to ensure that external reviews are conducted within the specified time frames and that required notices are provided in a timely manner;

b. procedures to ensure the selection of qualified and impartial clinical peer reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases;

c. procedures to ensure the confidentiality of medical and treatment records and clinical review criteria;

d. procedures to ensure that any individual employed by or under contract with the independent review organization adheres to the requirements of this Chapter.

2. establish a quality assurance program;

3. establish a toll-free telephone service to receive information related to external reviews on a twenty-four-hour-day, seven-day-a-week basis that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours.

B. Any clinical peer reviewer assigned by an independent review organization to conduct external reviews shall be a physician or other appropriate health care provider who meets the following minimum qualifications:

1. be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

2. be knowledgeable about the recommended health care service or treatment through actual clinical experience that may be based on either of the following:

a. the period of time spent actually treating patients with the same or similar medical condition of the covered person;

b. the period of time that has elapsed between the clinical experience and the present.

3. hold a nonrestricted license in a state of the United States and, in the case of a physician, hold a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review;

4. have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character.

C. In addition to the requirements of Subsection A of this Section, an independent review organization shall not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health insurance issuer, health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

D. In addition to the other requirements of this Section, in order to qualify to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor the clinical peer reviewer assigned by the independent organization to conduct the external review shall have a material professional, familial, or financial interest with any of the following:

1. the MNRO that is the subject of the external review;

2. any officer, director, or management employee of the MNRO that is the subject of the external review;

3. the health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

4. the facility at which the recommended health care service or treatment would be provided;

5. the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review;

6. the covered person who is the subject of the external review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6237. External Review Register**

A. An MNRO shall maintain written records in the aggregate and by health insurance issuer and health benefit plan on all requests for external review for which an external review was conducted during a calendar year, hereinafter referred to as the "register". For each request for external

review, the register shall contain, at a minimum, the following information:

1. a general description of the reason for the request for external review;
2. the date received;
3. the date of each review;
4. the resolution;
5. the date of resolution;
6. except as otherwise required by state or federal law, the name of the covered person for whom the request for external review was filed.

B. The register shall be maintained in a manner that is reasonably clear and accessible to the commissioner.

C. The register compiled for a calendar year shall be retained for the longer of three years or until the commissioner has adopted a final report of an examination that contains a review of the register for that calendar year.

D. The MNRO shall submit to the commissioner, at least annually, a report in the format specified by the commissioner. The report shall include the following for each health insurance issuer and health benefit plan:

1. the total number of requests for external review;
2. the number of requests for external review resolved and their resolution;
3. a synopsis of actions being taken to correct problems identified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6239. Emergency Services**

A. Emergency services shall not be limited to health care services rendered in a hospital emergency room.

B. When conducting medical necessity determinations for emergency services, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from a non-contracting provider within the service area of a managed care plan, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of the services if a prudent lay person would have reasonably believed that use of a contracting provider would result in a delay that would worsen the emergency or if a provision of federal, state, or local law requires the use of a specific provider.

C. If a participating provider or other authorized representative of a health insurance issuer or health benefit plan authorizes emergency services, the MNRO shall not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item, treatment, or service furnished in reliance upon approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider of emergency services.

D. Coverage of emergency services shall be subject to state and federal laws as well as contract or policy provisions, including co-payments or coinsurance and deductibles.

E. For immediately required post-evaluation or post-stabilization services, an MNRO shall provide access to an authorized representative 24 hours a day, 7 days a week, to facilitate review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6241. Confidentiality Requirements**

A. An MNRO shall annually provide written certification to the commissioner that its program for determining medical necessity complies with all applicable state and federal laws establishing confidentiality and reporting requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6243. Severability**

A. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation that can be given effect without the invalid provisions, item, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statute of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

**§6245. Effective Date**

A. This regulation shall become effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statute of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:

A public hearing on this proposed regulation will be held on February 28, 2002 at 9 a.m. in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit and make comments. The comment period will end on the close of business of February 28, 2002.

Interested persons may obtain a copy of this proposed regulation, and may submit oral or written comments to Claire Lemoine, Chief Health Attorney, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, telephone (225) 342-4242.

J. Robert Wooley
Acting Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Regulation 77C Medical Necessity Review Organizations**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is not anticipated that Regulation 77 would result in any implementation costs or savings to local or state governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Regulation 77 calls for an initial licensing fee of $1,500 and a renewal fee every other year of $1,500 for each Medical Necessity Review Organization (MNRO). Approximately 90 MNRO's were licensed in fiscal 2000/01. Approximately 20 MNRO's have been licensed in fiscal 2001/02. DOI has no way to estimate how many of the licensed MNRO's will seek renewal licenses in 2002/03 and 2003/04.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Regulation 77 calls for an initial licensing fee of $1,500 and biennial renewal fee of $1,500 from Medical Necessity Review Organizations seeking licensure in the state.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Regulation 77 may result in some additional employment in the state as MNRO's are licensed and may have to hire additional employees. DOI has no way estimating the numbers of persons this may involve.

| | |
|---|---|
| Chad M. Brown | Robert E. Hosse |
| Deputy Commissioner | General Government Section Director |
| Management and Finance | Legislative Fiscal Office |

0112#046

## NOTICE OF INTENT

**Department of Public Safety and Corrections**
**Board of Private Investigator Examiners**

Private Investigator Continuing Education
(LAC 46:LVII.518)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505.B.(1), the Louisiana Department of Public Safety and Corrections, Louisiana State Board of Private Investigator Examiners, hereby gives notice of its intent to amend Part LVII of Title 46, amending Chapter 5, Section 518, to require licensees to attend eight hours of continuing education every year (not every two years as the current law requires) and to further require renewal applications for each year to show compliance with this continuing education requirement.

This rule and regulation is an amendment to the initial rules and regulations promulgated by the Louisiana State Board of Private Investigator Examiners.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LVII. Private Investigator Examiners**
**Chapter 5. Application, Licensing, Training, Registration and Fees**

**§518. Continuing Education**

A. Each licensed private investigator is required to complete a minimum of eight hours of approved investigative educational instruction within the one year period immediately prior to renewal in order to qualify for a renewal license.

B. Each licensed private investigator is required to complete and return the LSBPIE Continuing Educational Compliance form with the request for license renewal each year. The form shall be signed under penalty of perjury and shall include documentation of each hour of approved investigation educational instruction completed.

C. Any licensee who wishes to apply for an extension of time to complete educational instruction requirements must submit a letter request setting forth reasons for the extension request to the Executive Director of the LSBPIE 30 days prior to license renewal. The Training Committee shall rule on each request. If an extension is granted, the investigator shall be granted 30 days to complete the required hours. Hours completed during a 30 day extension shall only apply to the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505.B(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Louisiana State Board of Private Investigator Examiners, LR 22:371 (May 1996), amended LR 27:1016 (July 2001), LR 28:

Comments should be forwarded to Charlene Mora, Chairman, State Board of Private Investigator Examiners, 2051 Silverside Drive, Suite 190, Baton Rouge, Louisiana 70808. Written comments will be accepted through the close of business on February 9, 2002.

A copy of these rules may be obtained from the Louisiana State Board of Private Investigator Examiners, 2051 Silverside Drive, Suite 190, Baton Rouge, Louisiana 70808, (225) 763-3556.

Charlene Mora
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Private Investigator Continuing Education**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation cost for this rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collection.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no economic benefit to individuals licensed by the Louisiana State Board of Private Investigator Examiners as the number of hours required of them for continuing education has been increased. Therefore, they will be expected to incur cost of approximately twice the previous costs they incurred for continuing education during the last year; and the same cost they incurred during the preceding year as this amendment returns the rule to where it was for the 2001 license renewals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment.

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|---|---|
| Celia R. Cangelosi | Robert E. Hosse |
| Attorney | General Government Section Director |
| 0201#039 | Legislative Fiscal Office |

## NOTICE OF INTENT

### Department of Public Safety and Correction Corrections Services

Adult Administrative Remedy Procedure
(LAC 22:I.325)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:1171 et seq., Corrections Administrative Remedy Procedure, and Administrative Procedures Act, R.S. 49:950 et seq., hereby provides notice of its intent to adopt the Adult Administrative Remedy Procedure. Prior LAC 22:I.325, Administrative Remedy Procedure, is now located at LAC 22:I.324.

**Title 22**
**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**
**Part I. Corrections**
**Chapter 3. Adult and Juvenile Services**
**Subchapter A. General**
**§325. Adult Administrative Remedy Procedures**

A. Administrative Remedy Procedure

1. On September 18, 1985, the Department of Public Safety and Corrections installed in all of its adult institution a formal grievance mechanism for use by all inmates committed to the custody of the Department. The process bears the name Administrative Remedy Procedure (ARP). Inmates are required to use the procedure before they can proceed with a suit in Federal and State Courts.

2. Inmates are encouraged to continue to seek solutions to their concerns through informal means, but in order to insure their right to use the formal procedure, they should make their request to the Warden in writing within a 30 day period after an incident has occurred. If, after filing in the formal procedure an inmate receives a satisfactory response through informal means, the inmate may request (in writing) that the Warden cancel his formal request for an administrative remedy.

3. All inmates may request information about or assistance in using the procedure from their classification officer or from a counsel substitute who services their living area.

4. Original letters of request to the Wardens should be as brief as possible. Inmates should present as many facts as possible to answer all questions (who, what, when, where, and how) concerning the incident. If a request is unclear or the volume of attached material is too great, it may be rejected and returned to the inmate with a request for clarity or summarization on one additional page. The deadline for this request begins on the date the resubmission is received in the Warden's office.

5. Once an inmate's request procedure, he must use the manila envelope that is furnished to him with this First Step to continue in the procedure. The flaps on the envelope may be tucked into the envelope for mailing to the facility's ARP Screening Officer.

B. Purpose. Corrections Services has established the Administrative Remedy Procedure through which an inmate may seek formal review of a complaint which relates to any aspect of his incarceration if less formal methods have not resolved the matter. Such complaints and grievances include, but are not limited to any and all claims seeking monetary, injunctive, declaratory, or any other form of relief authorized by law and by way of illustration includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies, or statutes. Through this procedure, inmates shall receive reasonable responses and where appropriate, meaningful remedies.

C. Applicability. Inmates may request administrative remedies to situations arising from policies, conditions, or events within the institution that affect them personally. There are procedures already in place within all DPS&C institutions which are specifically and expressly incorporated into and made a part of this Administrative Remedy Procedure. These procedures shall constitute the administrative remedies for disciplinary matters and lost property claims. The following matters shall not be appealable through this Administrative Remedy Procedure:

1. court decisions and pending criminal matters over which the Department has no control or jurisdiction;

2. Pardon Board and Parole Board decisions (under Louisiana law, decisions of these Boards are discretionary, and may not be challenged);

3. Louisiana Risk Review Panel recommendations;

4. Lockdown Review Board decisions (inmates are furnished written reasons at the time this decision is made as to why they are not being released from lockdown, if that is the case. The Board's decision may not be challenged. There are, however, two bases for request for administrative remedy on Lockdown Review Board hearings):

a. that no reasons were given for the decision of the Board;

b. that a hearing was not held within 90 days from the offender's original placement in lockdown or from the last hearing. There will be a 20-day grace period attached hereto, due to administrative scheduling problems of the Board; therefore, a claim based on this ground will not be valid until 110 days have passed and no hearing has been held. As used in this procedure, the following definitions shall apply.

D. Definitions

*ARP Screening Officer*—a staff member, designated by the Warden, whose responsibility is to coordinate and facilitate the Administrative Remedy Procedure process.

*Days*—calendar days.

*Emergency Grievance*—a matter in which disposition within the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate.

*Grievance*—a written complaint by an inmate on the inmate's own behalf regarding a policy applicable within an institution, a condition within an institution, an action involving an inmate of an institution, or an incident occurring within an institution.

E. Policy. All inmates, regardless of their classification, impairment, or disability, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the Warden to provide appropriate assistance for inmates with literacy deficiencies or language barriers. No action shall be taken against an inmate for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Inmates are entitled to pursue, through the grievance procedure, a complaint that a reprisal occurred.

1. Reviewers. If an inmate registers a complaint against a staff member, that employee shall not play a part in making a decision on the request. However, this shall not prevent the employee from participating at the Step One level, since the employee complained about may be the best source from which to begin collecting information on an alleged incident. If the inmate is not satisfied with the decision rendered at the First Step, he should pursue his grievance to the Assistant Secretary of Adult Services via the Second Step.

2. Communications. Inmates must be made aware of the system by oral explanation at orientation and should have the opportunity to ask questions and receive oral answers. The procedures shall be posted in writing in areas readily accessible to all inmates.

3. Written Responses. At each stage of decision and review, inmates will be provided written answers that explain the information gathered or the reason for the decision reached along with simple directions for obtaining further review.

F. Procedure

1. Screening. The ARP Screening Officer will screen all requests prior to assignment to the First Step. The screening process should not unreasonably restrain the inmate's opportunity to seek a remedy.

a. If a request is rejected, it must be for one of the following reasons, which shall be noted on Form ARP.

i. This matter is not appealable through this process, such as:

(a). court decisions;

(b). Parole Board/Pardon Board decisions;

(c). Louisiana Risk Review Panel recommendations;

(d). Lockdown Review Board (refer to section on "Applicability" [Subsection C]).

ii. There are specialized administrative remedy procedures in place for this specific type of complaint, such as:

(a). disciplinary matters;

(b). lost property claims.

iii. It is a duplicate request.

iv. In cases where a number of inmates have filed similar or identical requests seeking administrative remedy, it is appropriate to respond only to the inmate who filed the initial request. Copies of the decision sent to other inmates who filed requests simultaneously regarding the same issue will constitute a completed action. All such requests will be logged.

v. The complaint concerns an action not yet taken or a decision which has not yet been made.

vi. The inmate has requested a remedy for another inmate.

vii. The inmate has requested a remedy for more than one incident (a multiple complaint).

viii. Established rules and procedures were not followed.

ix. If an inmate refuses to cooperate with the inquiry into his allegation, the request may be denied due to lack of cooperation.

x. There has been a time lapse of more than 30 days between the event and the initial request, unless waived by the Warden.

b. Notice of the initial acceptance or rejection of the request will be furnished to the inmate.

2. Initiation of Process. Inmates should always try to resolve their problems within the institution informally, before initiating the formal process. This informal resolution may be accomplished through discussions with staff members, etc. If the inmate is unable to resolve his problems or obtain relief in this fashion, he may initiate the formal process.

a. The method by which this process is initiated is by a letter from the inmate to the Warden. For purposes of this process, a letter is:

i. any form of written communication which contains this phrase: "This is a request for administrative remedy;" or

ii. Form ARP-1 at those institutions that wish to furnish forms for commencement of this process.

b. No request for administrative remedy shall be denied acceptance into the Administrative Remedy Procedure because it is or is not on a form; however, no letter as set forth above shall be accepted into the process unless it contains the phrase: "This is a request for administrative remedy."

c. Nothing in this procedure should serve to prevent or discourage an inmate from communicating with the Warden or anyone else in the Department of Public Safety and Corrections. The requirements set forth in this document for acceptance into the Administrative Remedy Procedure are solely to assure that incidents which may give rise to a cause of action will be handled through this two step system of review. All forms of communication to the Warden will be handled, investigated, and responded to as the Warden deems appropriate.

d. If an inmate refuses to cooperate with the inquiry into his allegation, the request may be denied by noting the lack of cooperation on the appropriate Step Response and returning it to the inmate.

3. Multiple Requests. If an inmate submits multiple requests during the review of a previous request, they will be

logged and set aside for handling at such time as the request currently in the system has been exhausted at the Second Step or until time limits to proceed from the First Step to the Second Step have lapsed. The Warden may determine whether a letter of instruction to the inmate is in order.

4. Reprisals. No action shall be taken against anyone for the good faith use of or good faith participation in the procedure.

a. The prohibition against reprisals should not be construed to prohibit discipline of inmates who do not use the system in good faith. Those who file requests that are frivolous or deliberately malicious may be disciplined under the appropriate rule violation described in the DPS&C "Disciplinary Rules and Procedures for Adult Inmate."

G. Process

1. First Step (Time Limit 40 days)

a. The inmate commences the process by writing a letter to the Warden, in which he briefly sets out the basis for his claim, and the relief sought (refer to section on "Procedure C Initiation of Process" [Subsection F] for the requirements of the letter.) The inmate should make a copy of his letter of complaint and retain it for his own records. The original letter will become a part of the process, and will not be returned to the inmate. The institution is not responsible for furnishing the inmate with copies of his letter of complaint. This letter should be written to the Warden within 30 days of an alleged event. (This requirement may be waived when circumstances warrant. The Warden, or his designee, will use reasonable judgment in such matters.) The requests shall be screened by the ARP Screening Officer and a notice will be sent to the inmate advising that his request is being processed or is being rejected. The Warden may assign another staff person to conduct further fact-finding and/or information gathering prior to rendering his response. The Warden shall respond to the inmate within 40 days from the date the request is received at the First Step.

b. For inmates wishing to continue to the Second Step, sufficient space will be allowed on the response to give a reason for requesting review at the next level. There is no need to rewrite the original letter of request as it will be available to all reviewers at each Step of the process.

2. Second Step (Time Limit 45 days)

a. An inmate who is dissatisfied with the First Step response may appeal to the Secretary of the Department of Public Safety and Corrections by so indicating that he is not satisfied in the appropriate space on the response form and forwarding it to the ARP Screening Officer within 5 days of receipt of the decision. A final decision will be made by the Secretary and the inmate will be notified within 45 days of receipt. A copy of the Secretary's decision will be sent to the Warden.

b. If an inmate is not satisfied with the Second Step response, he may file suit in District Court. The inmate must furnish the administrative remedy procedure number on the court forms.

3. Monetary Damages

a. Department of Public Safety and Corrections based upon credible facts within a grievance or complaint filed by an inmate, may determine that such an inmate is entitled to monetary damages where monetary damages are deemed by the Department as appropriate to render a fair and just remedy.

b. Upon a determination that monetary damages should be awarded, the remaining question is quantum, or the determination as to the dollar amount of the monetary damages to be awarded. The matter of determining quantum shall be transferred to the Office of Risk Management of the Division of Administration which shall then have the discretionary power to determine quantum. The determination reached by the Office of Risk Management shall be returned to the Department of Public Safety and Corrections for a final decision. If a settlement is reached, a copy of the signed release shall be given to the Warden on that same date.

4. Deadlines and Time Limits

a. No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the inmate to move on to the next Step in the process. Time limits begin on the date the request is assigned to a staff member for the First Step response.

b. An inmate may request an extension in writing of up to five days in which to file at stage of the process. This request shall be made to the ARP Screening Officer for an extension to initiate a request; to the Warden for the First Step and to the Assistant Secretary of Adult Services for the Second Step. The inmate must certify valid reasons for the delay, which reasons must accompany his untimely request. The issue of sufficiency of valid reasons for delay shall be addressed at each Step, along with the substantive issue of the complaint.

c. The Warden may request permission for an extension of not more than five days from the Assistant Secretary of Adult Services for the Step One review/response. The inmate must be notified in writing of such an extension.

d. In no case may the cumulative extensions exceed 25 days.

5. Problems of an Emergency Nature

a. If an inmate feels he is subjected to emergency conditions, he must send an emergency request to the shift supervisor. The shift supervisor shall immediately review the request and forward the request to the level at which corrective action can be taken. All emergency requests shall be documented on an Unusual Occurrence Report.

b. Abuse of the emergency review process by an inmate shall be treated as a frivolous or malicious request and the inmate shall be disciplined accordingly. Particularly, but not exclusively, matters relating to administrative transfers and time computation disputes are not to be treated as emergencies for purposes of this procedure, but shall be expeditiously handled by the shift supervisor, when appropriate.

6. Sensitive Issues

a. If the inmate believes the complaint is sensitive and would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the Assistant Secretary of Adult Services (Second Step level). The inmate must explain, in writing, his reason for not filing the complaint at the institution.

b. If the Assistant Secretary of Adult Services agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the

complaint is sensitive, he shall so advise the inmate in writing, and return the complaint to the Warden's office. The inmate shall then have five days from the date the rejection memo is received in the Warden's office to submit his request through regular channels (beginning with the First Step if his complaint is acceptable for processing in the Administrative Remedy Procedure).

7. Records

a. Administrative Remedy Procedure records are confidential. Employees who are participating in the disposition of a request may have access to records essential to the resolution of requests. Otherwise, release of these records is governed by R.S. 15:574.12.

b. All reports, investigations, etc., other than the inmate's original letter and responses, are prepared in anticipation of litigation, and are prepared to become part of the attorney's work product for the attorney handling the anticipated eventual litigation of this matter and are therefore confidential and not subject to discovery.

c. Records will be maintained as follows.

i. A computerized log will be maintained which will document the nature of each request, all relevant dates, and disposition at each step. Each institution will submit reports on Administrative Remedy Procedure activity in accordance with Department Regulation No. C-05-001 "Activity Reports/Unusual Occurrence Reports-Operations Units-Adult."

ii. Individual requests and disposition, and all responses and pertinent documents shall be kept on file at the institution or at Headquarters.

iii. Records shall be kept at least three years following final disposition of the request.

8. Transferred Inmates. When an inmate has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution will complete the processing through the First Step. The Warden of the receiving institution will assist in communication with the inmate.

9. Discharged Inmates. If an inmate is discharged before the review of an issue that affects the inmate after discharge is completed, or if he files a request after discharge on such an issue, the institution will complete the processing and will notify the inmate at his last known address. All other requests shall be considered moot when the inmate discharges, and shall not complete the process.

10. Annual Review. The Warden shall annually solicit comments and suggestions on the processing, the efficiency and the credibility of the Administrative Remedy Procedure from inmates and staff. A report with the results of such review shall be provided to the Assistant Secretary of Adult Services.

H. Effective Date. Only ARP requests filed on or after the effective date of this Regulation, as adopted pursuant to the Administrative Procedures Act, shall be governed by this procedure. All ARP requests filed prior to the effective dated will be administered in accordance with the provisions of LAC 22:I.324, formerly LAC 22:I. 325, Administrative Remedy Procedure.

I. Request for Administrative Remedy Form (ARP-1)

ARP-1

ADMINSTRATIVE REMEDY PROCEDURE
THIS IS A REQUEST FOR ADMINISTRATIVE REMEDY

_____ _____
Inmate's Name DOC # Date of Incident/Complaint

_____
Place and Time of Incident/Complaint

Describe Nature of Complaint (i.e. WHO, WHAT, WHEN, WHERE, and HOW)

_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Inmate's Signature DOC # Date

TO:_____
Inmate's Name and DOC #

( ) ACCEPTED: Please respond to the inmate within 40 days.
( ) REJECTED: Your request has been rejected for the following reason:

_____

_____
_____
_____
_____
Date ARP Screening Officer

J. First Step Response Form (ARP-2)

ARP-2

ADMINISTRATIVE REMEDY PROCEDURE
FIRST STEP RESPONSE FORM

TO: _____
Inmate's Name DOC # Living Unit

FROM: _____
_____
_____
First Step Respondent Title

Response to Request Dated_____ Received by Inmate_____
Instructions to Inmate: If you are not satisfied with this response, you may go to Step Two by checking below and forwarding to the ARP Screening Officer within 5 days of your receipt of this decision.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

( ) I am not satisfied with this response and wish to proceed to Step Two.
REASON:

_____
_____

_____ _____ _____
Date Inmate's Signature DOC #

K. Second Response Form (ARP-3)

ARP-3

ADMINISTRATIVE REMEDY PROCEDURE
SECOND STEP RESPONSE FORM

TO: _____
Inmate's Name DOC # Living Unit
Response to Request Dated_____, Received in this office on _____
_____
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_____ _____
Date Secretary

**Family Impact Statement**

In accordance with the Administrative Procedures Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety & Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of the adult administrative remedy procedure will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (225) 324-6741. Comments will be accepted through the close of business at 4:30 p.m. on February 20, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 1171, et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:

Richard Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Adult Administrative Remedy Procedure**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The changes in the administrative remedy procedure resulting from this rule are designed to streamline the handling of grievances and provide a final administrative decision in a more timely manner. There are no estimated implementation costs since this is only a change in existing procedures.

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 are no estimated costs and/or economic benefits to directly affected persons since this is merely a change in procedures for an existing grievance procedure.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Robert B. Barbor
Executive Counsel
0201#070

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Correction**
**Corrections Services**

Juvenile Administrative Remedy Procedure
(LAC 22:I.326)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:1171, et seq., Corrections Administrative Remedy Procedure, and Administrative Procedures Act, R.S. 49:950 et seq., hereby provides notice of its intent to adopt a Juvenile Administrative Remedy Procedure.

**Title 22**
**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**
**Part I. Corrections**
**Chapter 3. Adult and Juvenile Services**
**Subchapter A. General**
**§326. Juvenile Administrative Remedy Procedure**

A. Purpose. The purpose of this regulation is to establish an administrative remedy procedure specific to juvenile offenders through which an offender may seek formal review of a complaint which relates to most aspects of his stay in secure care if less formal procedures have not resolved the matter.

B. Applicability. Assistant Secretary/Office of Youth Development, Wardens, Youth Programs Compliance Division staff and employees and offenders of each juvenile institution.

C. Definitions

*ARP Coordinator***C**a staff member designated by the Warden whose responsibility is to coordinate and facilitate the ARP process.

*Business Days***C**Monday through Friday.

*Calendar Days***C**consecutive days including weekends and holidays.

*Case Manager***C**a staff member whose primary responsibilities include a assisting offenders.

*Emergency Grievance***C**a matter in which disposition within the regular time limits would subject the offender or others to substantial risk of personal injury, or cause other serious or irreparable harm.

*Grievance***C**a written complaint on an offender's behalf regarding a policy, condition, action, or incident occurring within an institution that affects the offender personally.

*Initiation of the ARP Process***C**for a particular complaint, the administrative remedy procedure shall

commence the day the request is accepted in the ARP process.

*Offender***C**a person incarcerated in a juvenile correctional institution.

*Sensitive Issue***C**a complaint which the offender believes would adversely affect him if it became known at the institution.

*Youth Programs Compliance Division (YPCD)***C**a division located at the Office of Youth Development Headquarters in Baton Rouge. Employees of this division are responsible for monitoring the ARP process.

D. Policy

1. The administrative remedy procedure for juveniles has been established for offenders to seek formal review of a complaint which relates to most aspects of their incarceration. Such complaints and grievances include, but are not limited to, any and all claims seeking monetary, injunctive, declaratory, or any other relief authorized by law. By way of illustration, this includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, lost personal property, denial of publications, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies or statutes. Through this procedure, offenders shall receive reasonable responses and where appropriate, meaningful remedies.

2. Offenders may request administrative remedies to situations arising from policies, conditions, or events within the institution that affect them personally. Disciplinary reports are not grieveable and must be handled through the disciplinary appeal system. Court decisions and pending criminal and adjudication matters over which the Department has no control or jurisdiction shall not be appealable through this administrative remedy procedure.

3. All offenders, regardless of their classification, impairment or handicap, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the Warden to provide appropriate assistance for offenders with literacy deficiencies or language barriers. No action shall be taken against an offender for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Offenders are entitled to pursue, through this grievance procedure, a complaint that a reprisal occurred.

4. All offenders may request information and obtain assistance in using the administrative remedy procedure from his case manager, counselor, or other staff member. Nothing in this administrative remedy procedure will serve to prevent or discourage an offender from communicating with the Warden or anyone else in the Department.

E. General Procedures

1. Dissemination. New employees and incoming offenders must be made aware of the administrative remedy procedure in writing and by oral explanation at orientation and have the opportunity to ask questions and receive oral answers. A simplified version of the administrative remedy procedure will be provided in booklet form to the offenders during the orientation process. This version of the procedure shall also be posted in areas readily accessible to all employees and offenders.

2. Informal Resolution. Offenders are encouraged to resolve their problems within the institution informally, before initiating the formal ARP process. This informal resolution may be sought by talking to his case manager, counselor, or other staff member. An attempt at informal resolution does not affect the timeframe for filing an ARP; therefore, the offender and staff member assisting with informal resolution must be alert to the 30 calendar day filing timeframe so that the opportunity to file an ARP is not missed when it appears that the situation will not be informally resolved before the expiration of the filing period.

3. Initiation of ARP

a. An ARP is initiated by completing the first part of the Juvenile ARP Form (see Subsection N). No request for ARP shall be denied acceptance because it is not on a form; however, all requests must contain a statement or phrase to the effect: "This is a request for administrative remedy;" "This is a request for ARP;" or "ARP." Upon receipt by the ARP Coordinator, any such request will be attached to an ARP form.

b. The offender has 30 calendar days after the incident occurred in which to file a complaint. The ARP is considered "filed" upon receipt by the ARP Coordinator or designee. This includes those ARPs placed in the ARP or grievance box over the weekend or on a legal holiday. The ARP forms shall be available at designated sites at each institution and from case managers.

c. The offender shall complete the first part of the form outlining the problem and remedy requested. His case manager, counselor, or other staff member will be available for assistance in completing the form at each stage of the process.

d. If additional space is needed for completing any part of the form, another page of paper may be used and attached to the original form. The offender must give the completed, original form to his case manager or place it in the designated collection site to be picked by the ARP Coordinator.

e. Offenders released from secure care prior to filing their ARP should send the ARP directly to the ARP Coordinator. The ARP must be postmarked within 30 days or received within the 30 calendar day timeframe, if not mailed.

4. Screening of Requests. The ARP Coordinator will screen all requests prior to the Step One review/response. If the same complaint is received from different offenders, each must be reviewed as an individual complaint. If the ARP is rejected, the reason(s) for rejection shall be noted on the Juvenile ARP Form. Copies of ARP acceptances, rejections, etc. will be maintained by the ARP Coordinator. The Youth Programs Compliance Division will be copied on all rejections. A request may be rejected for one or more of the following reasons (See Part 10, "Judicial Review," for consequences of rejection).

a. The complaint pertains to a disciplinary matter, court decision or a judge's order in the offender's case.

b. The complaint concerns an action not yet taken or decision which has not yet been made.

c. There has been a time lapse of more than 30 calendar days between the event and receipt of the initial request.

d. The date of the event is not on the form. In this case, the form will be returned to the offender to have the correct date noted, however, the original 30 day time limit will still apply.

e. The offender has requested an administrative remedy for another offender.

f. A request is unclear. If this occurs, the request may be rejected and returned to the offender with a request for clarity. The deadline for this request will begin on the date the re-submission is received by the ARP Coordinator (within five calendar days in a secure facility and 10 calendar days if the offender has been released).

g. An offender refuses to cooperate with the inquiry into his allegation. If this occurs, the request may be rejected by noting the lack of cooperation on the Juvenile ARP Form and returning it to the offender.

h. The request is a duplicate of a previous request submitted by the same offender.

i. The request contains several unrelated complaints. Normally, an offender should not include more than one complaint in a single ARP. The ARP Coordinator has the discretion to accept or reject the ARP if it contains several unrelated complaints.

5. Reprisals. No action shall be taken against any offender for the good faith use of or good faith participation in the ARP. The prohibition against reprisals should not be construed to prohibit discipline of offenders who do not use the system in good faith. Those who file requests that are, as determined by the ARP Coordinator, frivolous or deliberately malicious may be disciplined under the appropriate rule violation contained in the "Disciplinary Rules and Procedures for Juvenile Offenders."

F. Step One (Maximum Time Limit**C**21 Calendar Days). ARP Coordinator's Review and Warden's Response

1. The offender will begin the process by completing the first part of a Juvenile ARP Form, which will briefly set out the basis for the claim, and the relief sought. The form must be submitted within 30 calendar days of the incident which caused the aggrievement. The 30-day requirement may be waived by the Warden when circumstances warrant, i.e. if the offender is ill for an extended period of time or if a significant, unusual event affects the offender's ability to file the ARP. The offender may also request a five calendar day extension from the ARP Coordinator if additional time is needed to prepare the ARP.

2. The original Juvenile ARP Form submitted by the offender will become part of the process, and will not be returned to the offender until the Warden's response (Step One) has been finalized.

3. ARPs shall be screened and logged by the ARP Coordinator. If appropriate for handling, the ARP Coordinator or fact-finding person assigned by the ARP Coordinator will begin fact-finding, including communication with the various program managers for program specific complaints, if needed. The ARP Coordinator will send notice to the offender via a copy of the Juvenile ARP Form regarding the status (acceptance/rejection) of the request. The Warden should be kept appraised of the status of the ARP throughout the process.

4. ARPs filed by an attorney must include proof of representation in the form of a signed pleading, a letter signed by the offender's parent or guardian advising of the retention of the attorney or some other legal authorization for the attorney's representation. The ARP Coordinator or fact-finding person cannot interview the offender without contacting the attorney to give the attorney an opportunity to be present during the ARP Coordinator/fact-finding person's interview with the offender. The offender may not be interviewed without the attorney (unless the attorney waives his presence) for a minimum of two business days after the staff's contact with the attorney. If the attorney cannot be available within this timeframe, the ARP process will proceed as usual. If no proof of representation is attached to the ARP, the 48-hour waiting period is not required.

5. If the offender advises the ARP Coordinator or fact-finding person during the investigation that he has spoken with an attorney about the ARP, the interview must cease. The ARP Coordinator or fact-finding person will obtain the attorney's name and telephone number from the offender and contact the attorney following the procedures described in the preceding paragraph.

6. The ARP Coordinator will submit the ARP, supporting documentation and recommendation to the Warden for final Step One action, which must be completed within 21 calendar days of receipt of the ARP by the ARP Coordinator. Emergency and medical, safety or abuse-related requests should be handled expeditiously. Abuse-related requests should also be copied to the Project Zero Tolerance Investigators for verification that an investigation has been or is being conducted (if appropriate to the circumstances.)

7. The Warden may return the Juvenile ARP Form to the ARP Coordinator for additional information or further review prior to rendering the response

8. Once the Warden's response has been entered onto the original Juvenile ARP Form, the form will be returned to the ARP Coordinator. The ARP Coordinator will log and forward the original to the offender, keep a copy for the ARP file and send a copy to the appropriate section of the institution, if applicable. Copies of documents gathered in preparation of the review and response to the grievance will be maintained in the ARP file.

9. Unless the offender appeals to Step Two, no further action is needed at this level.

G. Step Two (Maximum Time Limit**C**21 Calendar Days). Secretary's Response

1. An offender who is dissatisfied with the Step One decision may appeal to the Secretary. Within 10 days of receipt of the Step One decision, the offender must complete the next part of the original ARP noting the request for the Step Two review and provide it to his case manager or place it in the designated collection site for the ARP Coordinator to pick up. His case manager or other staff member will be available to assist as needed with filing the appeal.

2. The ARP Coordinator will retain a copy for the ARP file, log and mail the original form along with copies of any supporting documentation directly to the Secretary or his designee. For the purpose of the Step Two response, this authority has been delegated by the Secretary to the Assistant Secretary of the Office of Youth Development (OYD).

3. A final decision will be made by the Assistant Secretary/OYD and the offender will be notified of the decision by mail (copy of the ARP form) postmarked within 21 calendar days of the Assistant Secretary's receipt of the appeal. The Assistant Secretary/OYD will retain a copy of the ARP and return the original to the ARP Coordinator. The ARP Coordinator will copy the decision to the Warden,

offender's attorney (if ARP was filed by the attorney), and to the ARP file. The ARP Coordinator will also insure theoriginal response is sent to the offender and obtain the offender's signed acknowledgment of receipt.

H. Judicial Review.

1. If an offender's ARP is rejected or if he is not satisfied with the Step Two response, he may seek judicial review of the decision pursuant to R.S. 15:1177 et seq. within 30 calendar days after receipt and signing acknowledgment of receipt of the decision.

2. In these cases, the ARP Coordinator will notify the offender's parents or guardian and attorney (if applicable), in writing, that the departmental grievance procedure has been exhausted.

I. Timeframes and Extensions

1. An offender may make a written request to the ARP Coordinator for an extension of up to five calendar days in which to initiate an ARP. He may make a written request to the Warden for an extension of up to five calendar days in which to appeal to the Secretary. (This does not limit the Warden's discretion under Section 8.A. to grant any filing timeframe waiver that he deems appropriate.) The Warden must certify valid reasons for the delay.

2. The Warden may make a written request to the Assistant Secretary/OYD for an extension of up to seven calendar days for the Step One review/response. The offender must be notified in writing of such an extension. The Assistant Secretary/OYD may extend time needed for his response when such is deemed necessary. However, in no case may the cumulative extensions exceed 30 calendar days. This does not include waivers granted by the Warden due to the offender's illness or other significant, unusual events.

3. Unless an extension has been granted, no more that 42 calendar days shall elapse from the ARP coordinator's receipt of the ARP to completion of the Step Two process. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process.

J. Sensitive Issues

1. If the offender believes his complaint is sensitive and he would be adversely affected if it became known at the institution, he may file the complaint directly with the Assistant Secretary/OYD. The offender must explain, in writing, the reason for not filing the complaint at the institution.

2. If the Assistant Secretary/OYD agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the complaint is sensitive, he shall so advise the offender in writing, and return the complaint. When this occurs, the Assistant Secretary/OYD shall also send a copy of this communication to the Warden and to the ARP Coordinator. The ARP Coordinator will insure that the decision is delivered to the offender and obtain the offender's signature acknowledging receipt.

3. The offender shall then have the normal 30 calendar day deadline from the date the incident occurred or seven calendar days from the date he receives the rejection (whichever is longer) to submit his request through regular channels beginning with Step One.

K. ARPs Related to Lost Property Claims

1. Under no circumstances may an offender be compensated for unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other offenders. If the loss of personal property occurs through the negligence of the institution and/or its employees, the offender's claim may be processed as described below.

2. If a state-issue item is available, the offender will be offered such as replacement for the lost personal property. If a state-issue replacement is not available, the Warden or his designee will determine a reasonable value for the lost personal property. The maximum liability is $50. Regardless of whether the ARP results in a monetary or non-monetary replacement, the Lost Property Agreement form (see Subsection O) will be completed and submitted to the offender for his signature. ARPs (with Lost Property Agreement forms attached) resulting in monetary settlements will be forwarded to the Assistant Secretary/OYD for review and processing. These ARPs must include a cover letter advising that the ARP is for settling a lost property claim.

3. The ARP will be processed in accordance with the established timeframes and guidelines except that the response will not be delayed pending the processing of the monetary award by the Assistant Secretary/OYD.

L. Miscellaneous

1. Records. Administrative remedy procedure records are confidential and release of these records is governed by R.S. 15:574.12 and Ch.C. Art. 412. Records shall be kept at least three years following final disposition of the request. The Assistant Secretary/OYD shall formulate a procedure for orderly disposal of these records. The following records must be maintained. The institution may retain other records as deemed appropriate.

a. A database (on computer) will be maintained by the ARP Coordinator which will document the nature of each request, all relevant dates, recommendations and dispositions of Steps One and Two.

b. Each institution will submit reports on ARP activity in accordance with Department Regulation No. C-05-001-J.

c. Individual ARPs and dispositions, and all responses and pertinent documents shall be kept on file at the ARP Coordinator's office.

2. Transferred Offenders. When an offender has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution will complete the processing through Step One. The Warden of the receiving institution will assist in communication with the offender.

3. Discharged Offenders. If an offender is discharged before the review of an ARP, or if he files an ARP after discharge, the institution will complete the processing and will notify the offender at his last known address. (The 30 calendar day timeframe in which to file an ARP applies regardless of whether the offender has been discharged from secure care.)

4. Monetary Damages. Based upon credible facts within an ARP, the Assistant Secretary/OYD may find cause to believe that monetary damages are a fair and just remedy. The Assistant Secretary/OYD shall consult with the

Secretary and the Legal Section of the Department to determine if monetary damages are appropriate. Upon finding that monetary damages should be awarded, a dollar amount of the monetary damages to be awarded must be determined. This matter shall be referred to the Office of Risk Management (ORM) of the Division of Administration. If a settlement is reached, a copy of the signed release shall be given/faxed to the appropriate institution.

5. Annual Review. The Warden shall annually solicit comments and suggestions from offenders and staff regarding the handling of requests, the efficiency and the credibility of the administrative remedy procedure and report the results of such review to the Assistant Secretary/OYD and the Director of YPCD.

M. Effective Date. Only ARP requests filed on or after the effective date of this Regulation, as adopted pursuant to the Administrative Procedures Act, shall be governed by this procedure and all ARP requests filed prior to the effective date will be administered in accordance with the provisions of LAC 22:I.324, formerly LAC 22:I.325, Administrative Remedy Procedure. All juvenile lost property claims filed prior to the effective date of this rule will be administered in accordance with LAC 22:I.389. All juveniles lost property claims filed after the effective date of this rule shall be governed by this procedure only.

N. Juvenile ARP Form

DPS&C - CORRECTIONS SERVICES Number: _____-_____-____
JUVENILE ARP FORM Date Received:_____
Name: _____JIRMS Number:_____
Institution: _____Housing Unit:_____

"THIS IS A REQUEST FOR ARP"

(You may ask your case manager or other staff members for help completing this form.)
State your problem (WHO, WHAT, WHEN, WHERE AND HOW) and the remedy requested (what you want to solve the problem):

Problem: _____
_____
_____
_____
Remedy requested: _____
Date of Incident:_____ Today's Date:_____
This form must be completed within 30 calendar days of the date of the incident and given to the ARP Coordinator or placed in the ARP/grievance box.

**Step One– ARP Coordinator's Review and Warden's Response**
(Maximum Time For Processing: 21 calendar days)
_____Denied _____Rejected _____Returned _____ Accepted Date: _____
Reason: _____
_____ Handled Informally By _____
AC's Recommendation:

Sent to Warden on: _____AC's Signature: _____
Warden's response to your ARP Step One request: _____
_____
_____
_____
Date: _____ Warden's Signature: _____
If you are not satisfied with this response, you may go to Step Two. The ARP Coordinator must submit your request to the Secretary within 10 calendar days after you receive the Step One response.

Received Step One on: _____ Juvenile's Signature: _____
Request Step Two: __yes ___no Reason for Step Two request: _____
_____
Date Step Two request received by AC: ____ Date Sent to Secretary: _____
AC's Signature: _____

**Step Two - Secretary's Response**
(Maximum Time For Processing: 21 calendar days)
Date Received:
Secretary's response to ARP Step Two request: _____
_____
_____
_____
Date: _____ _____
Secretary's Signature
Date received Secretary's response:_____ _____
Juvenile's Signature
If you are not satisfied with this response, you may seek judicial review. A request for judicial review must be submitted to the court within 30 calendar days after receiving the Step Two decision.

O. Lost Property Agreement

Rev. 01-01-02

**LOST PROPERTY AGREEMENT**

I, _____(Offender name), JIRMS # _____, filed an ARP for _____(description of lost property.) My ARP was filed on _____. I have received _____as a settlement for my lost property. Since I have received a settlement for my lost property, the State of Louisiana (Department of Public Safety and Corrections [DPS&C]) does not owe me anything for my property which was reported lost on _____(Date ARP filed.) I agree to release the State of Louisiana (DPS&C) and any of its agents, representatives, officers and employees from any liability for compensation, damages and any other amounts that may be owed to me because my property was lost. I also agree to discharge the State of Louisiana of any liability that may exist. I agree to all the terms of this agreement.
WITNESSES:
_____ _____
(Signature of Offender)
_____ _____
(Date)
Warden's Approval _____
Secretary's Approval
(Necessary for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 1171, et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:

**Family Impact Statement**

In accordance with the Administrative Procedures Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of these amendments to the procedures for lost property claims will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (225) 324-6741. Comments will be accepted through the close of business at 4:30 p.m. on February 20, 2002.

Richard Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Juvenile Administrative Remedy Procedure**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The changes in the administrative remedy procedure resulting from this rule are designed to streamline the handling of grievances and provide a final administration decision in a more timely manner. There are no estimated implementation costs since this is only a change in existing procedures. Pending grievances will be processed under the existing rule and, after the effective date, new filings will be processed under the new rule.

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 are no estimated costs and/or economic benefits to directly affected persons since this is merely a change in procedures for an existing grievance procedure.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

| | |
|---|---|
| Robert B. Barbor | Robert E. Hosse |
| Executive Counsel | General Government Section Director |
| 0201#069 | Legislative Fiscal Office |

**NOTICE OF INTENT**

**Department of Public Safety and Corrections**
**Corrections Services**
**Office of Adult Services**

Lost Property Claims (LAC 22:I.369)

The Department of Public Safety and Corrections, Corrections Services, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby provides notice of its intent to amend the Lost Property Claim Rule.

**Title 22**
**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**
**Part I. Corrections**
**Chapter 3. Adult and Juvenile Services**
**Subchapter A. General**
**§369. Lost Property Claims**

A. The purpose of this section is to establish a uniform procedure for handling "lost property claims" filed by inmates in the custody of the Department of Public Safety and Corrections. All wardens are responsible for implementing and advising inmates and affected employees of its contents.

B. When an inmate suffers a loss of personal property, he may submit a claim to the warden. The claim should be submitted on the attached Form A. The claim must include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item, and any proof of ownership or value of the property available to the inmate. All claims for lost personal property must be submitted to the warden within 10 days of discovery of the loss.

C. Under no circumstances will an inmate be compensated for an unsubstantiated loss, or for a loss which results from the inmate's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other inmates.

D. The warden, or his designee, will assign an employee to investigate the claim. The investigative officer will investigate the claim fully and will submit his report and recommendations to the warden, or his designee.

E. If a loss of an inmate's personal property occurs through the negligence of the institution and/or its employees, the inmate's claim may be processed in accordance with the following procedures.

1. Monetary

a. The warden, or his designee, will recommend a reasonable value for the lost personal property (with the exception of personal clothing) as described on Form A. Liability will be pursuant to Department Regulation No. C-03-007 "Inmate Personal Property List, State Issued Items, Procedures for the Reception, Transfer, and Disposal of Inmate Personal Belongings;"

b. Forms B and C will be completed and submitted to the inmate for his signature; and

c. The claim will be submitted to the assistant secretary of Adult Services for review and final approval.

2. Nonmonetary

a. The inmate is entitled only to state issue where state issued items are available.

b. The institution's liability for any lost inmate clothing will be limited to the following.

i. For inmates processed through HRDC/WRDC/FRDC prior to March 31, 2000, replacement is limited to state issue where state issue is available.

ii. For inmates received through HRDC/WRDC/FRDC on or after March 31, 2000, the state does not assume liability for any personal clothing.

c. The warden, or his designee, will review the claim and determine whether or not the institution is responsible.

d. Form B will be completed and submitted to the inmate for his signature.

e. Form C will be completed and submitted to the inmate for his signature when state issue replacement has been offered.

E. If the warden, or his designee, determines that the institution and/or its employees are not responsible for the inmate's loss of property, the claim will be denied, and Form B will be submitted to the inmate indicating the reason. If the inmate is not satisfied with the resolution at the unit level, he may indicate by checking the appropriate box on Form B and submitting it to the screening officer within five days of receipt. The screening officer will provide the inmate with an acknowledgment of receipt and date forwarded to the assistant secretary of Adult Services. A copy of the inmate's original Lost Personal Property Claim (Form A) and Lost Personal Property Claim Response (Form B) and other relevant documentation will be attached.

F. Form A **C** Lost Personal Property Claim

FORM A

LOST PERSONAL PROPERTY CLAIM

1. Inmate: _____
(Inmate's Name, DOC #, and location)
2. Date of Loss: _____
3. Circumstances which resulted in the loss of personal property:
_____
_____
_____

4. Items lost (include description) and value:
_____
_____
_____

NOTE: False claims or false representations of lost items' value will subject the inmate to disciplinary action.

5. Must attach proof of ownership and proof of value.
6. A claim must be submitted within 10 days of the date of loss. The claim is to be submitted to the Warden.

SUBMITTED BY: _____ _____
Inmate's Signature DOC # Date

G. Form B **C** Lost Personal Property Claim Response

FORM B

LOST PERSONAL PROPERTY CLAIM RESPONSE

CLAIM # _____
DATE: _____

TO: _____
(Inmate's Name, DOC # and location)

FROM: _____

Your request for reimbursement/settlement/replacement of your lost personal property has been reviewed with the below recommended actions:

❑ DENIED

____ Your records were reviewed and no proof of ownership is indicated
_____ Unallowable item at this institution
_____ Clothing/items improperly marked according to inmate posted policy
_____ Item illegally obtained
_____ Investigation reveals loss resulted from barter, gambling, or sale
_____ Investigation has proved your claim invalid or unsubstantiated
_____ Loss resulted in irresponsibility on your part to keep personal items secure in footlocker, cell, etc.
_____ Other _____

❑ APPROVED

_____ You are being offered state issue items as replacement for the items reported missing
_____ Monetary settlement in the amount of $_____ will be processed
_____ Other _____

Signature of Investigating Officer _____

_____
WARDEN

_____ _____
Inmate's Signature DOC # Date

❑ I am not satisfied with this decision and wish to appeal to the Assistant Secretary of Adult Services

H. Form C **C** Agreement

FORM C

AGREEMENT

I, _____, (Inmate's name and DOC #), having filed a claim for lost property on _____do hereby acknowledge receipt of _____ as full settlement, compromise, and discharge of any and all liability which exists or which might exist, and do hereby agree to release and discharge the State of Louisiana, Department of Public Safety and Corrections, and any and all of its agents, representatives, officers, and employees from any and all liability for compensation, damages, and all other amounts, if any, which might be due me by reason of the loss reported on _____ (date) (whether the liability, if any, be in damages, tort, or otherwise, or whether the liability, if any, be under the laws of the State of Louisiana, or the laws of the United States.) I agree to have this claim processed and settled in accordance with the terms set forth in the agreement.

WITNESSES:

_____ _____
Inmate's Signature DOC #

_____ _____
Date

WARDEN'S APPROVAL _____

SECRETARY'S APPROVAL _____
(necessary only for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, of Adult Services, LR 19:657 (May 1993), amended LR 28:

Interested persons may submit written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, Corrections Services, 504 Mayflower Street, Baton Rouge, LA 70802, or by facsimile to (225) 342-3095. All comments must be submitted by 4:30 p.m., February 20, 2002.

**Family Impact Statement**

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of the amendments to the procedures for lost property claims will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Richard L Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Lost Property Claims**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Department is only making technical changes to the existing rule and therefore no implementation costs are anticipated.

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 are no estimated costs and/or economic benefits to directly affected persons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

| | |
|---|---|
| Robert B. Barbor | Robert E. Hosse |
| Executive Counsel | General Government Section Director |
| 0201#068 | Legislative Fiscal Office |

## NOTICE OF INTENT

### Department of Revenue
### Policy Services Division

Certain Imported Cigarettes
(LAC 61:I.5101)

The Department of Revenue, in accordance with the provisions of R.S. 13:5062(10), R.S. 47:1511, and the Administrative Procedure Act, R.S. 49:951 et seq., proposes to adopt this rule. The rule is needed to establish procedures for obtaining information for the enforcement of the conditions of the Master Settlement Agreement.

In 1998, leading tobacco product manufacturers, 46 states including Louisiana, several territories and the District of Columbia, reached an agreement that settled existing and potential claims by the jurisdictions against the manufacturers. As part of the "Master Settlement Agreement," Louisiana was to implement either the model statute or a "qualifying statute" requiring escrow payments by tobacco product manufacturers who had not participated in the settlement. During the 1999 Regular Legislative Session, Act 721, effective July 1, 1999, enacted R.S. 13:5061 et seq., establishing certain requirements for tobacco product manufacturers. This Act included the requirement that nonparticipating manufacturers establish a reserve fund to guarantee a source of compensation against future health claims. The nonparticipating manufacturers are to pay into the reserve fund, or escrow account, a specified amount per unit sold during the respective year and are to annually certify to the attorney general that they are in compliance. The number of units sold is to be measured by the excise taxes collected by the state on cigarettes, including roll-your-owns, as defined at R.S. 13:5062(4). The provisions of R.S. 13:5062(10) state that the Department of Revenue shall adopt rules necessary to ascertain the amount of state excise tax paid each year on the products made by the nonparticipating tobacco manufacturers.

To obtain the requisite information, the Department of Revenue and the Tobacco Settlement Enforcement Unit of the Louisiana Department of Justice developed a schedule for reporting tobacco products made by nonparticipating manufacturers that were subsequently imported into Louisiana, either directly from the manufacturer or through a distributor, for sale, use, or consumption within this state. Since the schedule's distribution, a number of tobacco wholesale dealers have failed to comply with the Secretary's instructions to submit the schedule with their monthly return. Without complete compliance in providing the requested information to assure diligent enforcement of the provisions of R.S. 13:5061 et seq., the state of Louisiana faces the possible reduction in the payments under the Master Settlement Agreement and can be penalized for the loss of market share experienced by other participating states if such loss can be attributed to Louisiana's lack of enforcement of the provisions of the Master Settlement Agreement.

This rule establishes the manner by which the information is to be provided and addresses penalties that may be imposed on registered tobacco dealers who fail to comply.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 51. Tobacco Tax**

**§5101. Reporting of Certain Imported Cigarettes; Penalty**

A. Every registered wholesale tobacco dealer receiving cigarettes or roll-your-own tobacco made by a tobacco product manufacturer who is not participating in the Master Settlement Agreement, whether the product is purchased directly from the manufacturer or through a distributor, retailer or similar intermediary or intermediaries, must furnish the following information:

1. invoice number;
2. manufacturer's name and complete address;
3. quantity of product obtained, i.e. number of cigarettes or ounces of roll-your-own tobacco as defined at R.S. 13:5062(4);
4. product brand name;
5. whether the product was shipped directly from the manufacturer;
6. name and address of the seller if other than the manufacturer; and
7. any other information that may be requested by the secretary.

B. The information required by Subsection A is to be provided on a form prescribed by the secretary and must be submitted with and at the same time as the monthly tobacco report. If, during the reporting period, there were no purchases of a product made by a manufacturer who is not participating in the Master Settlement Agreement, such is to be indicated on the prescribed form and the form attached to the monthly tobacco report.

C. Any registered wholesale tobacco dealer who fails to comply with the reporting requirement or provides false or misleading information in response to Subsection A may be subject to the revocation or suspension of any permit issued under R.S. 47:844, in accordance with R.S. 47:844.A(4).

D. When it is determined that a registered wholesale tobacco dealer is not in compliance with this rule, the secretary shall give that wholesale dealer written notice by registered mail of the noncompliance and request compliance within 15 days. Upon a second instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to, within 10 days, show cause why the wholesale dealer's permit shall

not be suspended. Upon a third instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to show cause, on a date and time set by the secretary, as to why the wholesale dealer's permit shall not be suspended. If the wholesale dealer does not comply with the terms of this rule after the hearing, the secretary shall suspend the wholesale dealer's permit for a period of at least 30 days, or until such time as the dealer has become compliant. Failure to properly respond to written notification of noncompliance shall constitute a subsequent instance of noncompliance.

E. The information furnished under Subsection A may be disclosed as provided in R.S. 47:1508.B(11).

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5062 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Policy Services Division, LR 28:

**Family Impact Statement**

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation 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 super-vision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, arguments, information, or comments on this proposed rule in writing to Linda Denney, Senior Policy Consultant, Office of Legal Affairs, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, February 26, 2002. A public hearing will be held on Wednesday, February 27, 2002 at 2 p.m. at 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Certain Imported Cigarettes**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs as a result of this proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units as a result of this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will have little effect on the tobacco wholesalers who file tax returns as the information required on the supplemental schedule is information already being retained by the wholesaler for the secretary's examination.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should have no effect on competition or employment.

Cynthia Bridges
Secretary
0201#058

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue**
**Policy Services Division**

Electronic Funds Transfer
(LAC 61:I.4910)

Under the authority of R.S. 47:1511 and 1519 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue intends to amend LAC 61:I.4910 pertaining to the electronic transfer of funds in payment of various taxes due the state of Louisiana.

These amendments reflect procedural changes in the processing of taxpayers who are required to make electronic transfer of funds in payment of taxes, fees, and other amounts due to be paid to the Department of Revenue. The Department is updating the rule for these changes and to further clarify the requirements associated with electronic funds transfers.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 49. Tax Collection**
**§4910. Electronic Funds Transfer**

A. Electronic Funds Transfer Requirements

1. Taxpayers are required to remit their respective tax or taxes electronically or by other immediately investible funds as described in R.S. 47:1519 if any of the following criteria are met:

a. the payments made in connection with the filing of any business tax return or report averaged, during the prior 12-month period, $20,000 or more per reporting period; or

b. any business tax return or report is filed more frequently than monthly and the average total payments during the prior 12-month period exceed $20,000 per month; or

c. any company who files withholding tax returns and payments on behalf of other taxpayers and payments during the previous 12-month period averaged $20,000 or more per month for all tax returns filed.

2. Any taxpayer whose tax payments for a particular tax averages less than $20,000 per payment may voluntarily remit amounts due by electronic funds transfer with the approval of the secretary. After requesting to electronically transfer tax payments, the taxpayer must continue to do so for a period of at least 12 months.

B. Definitions. For the purposes of this Section, the following terms are defined.

*Automated Clearinghouse Credit*–an automated clearinghouse transaction in which taxpayers through their own banks, originates an entry crediting the state's bank account and debiting their own bank account. Banking costs incurred for the automated clearinghouse credit transaction shall be paid by the person originating the credit.

*Automated Clearinghouse Debit*–an automated clearinghouse transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

*Business Tax*–any tax, except for individual income tax, collected by the Department of Revenue.

*Electronic Funds Transfer*–any transfer of funds other than a transaction originated by check, draft, or similar paper instrument, that is initiated electronically so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit or automated clearinghouse credit. Federal Reserve Wire Transfers (FedWire) may be used only in emergency situations and with prior approval from the department.

*FedWire Transfer*–any transaction originated by taxpayers utilizing the national electronic payment system to transfer funds through the Federal Reserve banks, when the taxpayers debit their own bank accounts and credit the state's bank account. Electronic funds transfers may be made by FedWire only if payment cannot, for good cause, be made by automated clearinghouse debit or credit and the use of FedWire has the prior approval of the department. Banking costs incurred for the FedWire transaction shall be paid by the person originating the transaction.

*Other Immediately Investible Funds*–cash, money orders, bank draft, certified check, teller's check, and cashier's checks.

*Payment*–any amount paid to the Department of Revenue representing a tax, fee, interest, penalty, or other amount.

C. Taxes Required to be Electronically Transferred. Tax payments required to be electronically transferred may include corporation income and franchise taxes including declaration payments; income tax withholding; sales and use taxes; severance taxes; excise taxes; and any other tax or fee administered or collected by the Department of Revenue. A separate transfer shall be made for each return.

D. Taxpayer Notification

1. Those taxpayers required to electronically transfer tax payments will be notified in writing by the department of the electronic funds transfer data format and procedures at least 90 days prior to the required electronic funds transfer effective date. The taxpayer will be given payment method options (ACH debit, ACH credit, or other immediately investible funds) from which to select. Depending on the method selected, the taxpayer will be required to submit specific information needed to process electronic payments. Before using ACH debit, the taxpayer must register at least 60 days in advance. Once required to remit taxes by electronic funds transfer, the taxpayer must continue to do so until notified otherwise by the department.

2. After one year, taxpayers whose average payments have decreased below the threshold may request to be relieved of the electronic funds transfer requirement.

3. Taxpayers experiencing a change in business operations that results in the average payments not meeting the requirements, may request to be relieved of the electronic funds transfer requirement. "Change in business operations" shall include changing of pay services for the purpose of filing income tax withholding.

E. Failure to Timely Transfer Electronically

1. Remittances transmitted electronically are considered paid on the date that the remittance is added to the state's bank account. Failure to make payment or remittance in immediately available funds in a timely manner, or failure to provide such evidence of payment or remittance in a timely manner, shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law for delinquent or deficient tax, fee or obligation payments. If payment is timely made in other than immediately available funds, penalty, interest, and loss of applicable discount shall be added to the amount due from the due date of the tax, fee or obligation payment to the date that funds from the tax, fee, or obligation payment subsequently becomes available to the state.

2. When the statutory filing deadline, without regard to extensions, falls on a Saturday, Sunday, or Federal Reserve holiday, the payments must be electronically transferred in order to be received by the next business day. Transfer must be initiated no later than the last business day prior to the filing deadline. Deadlines for initiating the transfer for ACH credits are determined by the taxpayer's financial institution. Deadlines for ACH debits are established by the payment processor and specified in instructions provided by the department.

3. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519 and this rule, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must

furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

4. Except for the withholding tax return, Form L-1, the filing of a tax return or report is to be made separately from the electronic transmission of the remittance. Failure to timely file a tax return or report shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law.

5. In situations involving extenuating circumstances as set forth in writing by the taxpayer and deemed reasonable by the secretary of the Department of Revenue, the secretary may grant an exception to the requirement to transmit funds electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 19:1032 (August 1993), repromulgated LR 19:1340 (October 1993), amended LR 20:672 (June 1994), LR 23:448 (April 1997), LR 28:

**Family Impact Statement**

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation 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 super-vision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, arguments, information, or comments on these proposed amendments in writing to Linda Denney, Senior Policy Consultant, Office of Legal Affairs, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, February 26, 2002. A public hearing will be held on Wednesday, February 27, 2002, at 10 a.m. at 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Electronic Funds Transfer**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There should be no implementation costs associated with the proposed amended rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units as a result of the proposed amendments to this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no effect on the costs for taxpayers who file their tax returns.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0201#081

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue**
**Policy Services Division**

Federal Income Tax Reduction
(LAC 61:I.1307)

Under the authority of R.S. 47:293(3), R.S. 47:297.B, R.S. 47:295, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1307 relative to the federal income tax deduction.

Louisiana Revised Statute 47:293(3) defines "federal income tax liability" to mean "the total amount of tax due to the United States for the taxable period on the individual income tax return required to be filed by any taxpayer, except that social security taxes and self-employment taxes shall not be included." The adoption of LAC 61:I.1307 will clarify the federal income tax deduction.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 13. Income: Personal**
**§1307. Federal Income Tax Deduction**

A. Individual income taxpayers who deduct the federal income tax liability defined in R.S. 47:293(3) and are due a credit for foreign taxes, shall be allowed two options for computing the federal income tax liability deduction. The taxpayer may either:

1. use a federal tax liability that has been reduced by the federal credit for foreign taxes allowed by Internal Revenue Code Section 27, and take the Louisiana credit for federal credits provided by R.S. 47:297.B; or

2. use a federal tax liability that has not been reduced by the federal credit for foreign taxes allowed by Internal Revenue Code Section 27, and forego any claim to the Louisiana credit for federal credits provided by R.S. 47:297.B.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:293(3), R.S. 47:297.B, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 28:

**Family Impact Statement**

The proposed adoption of LAC 61:I.1307, regarding the federal income tax deduction 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:

1. The implementation of this proposed rule will have no known or foreseeable effect on the stability of the family.
2. The implementation of this proposed rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.
3. The implementation of this proposed rule will have no known or foreseeable effect on the functioning of the family.
4. The implementation of this proposed rule will have no known or foreseeable effect on family earnings and family budgets.
5. The implementation of this proposed rule will have no known or foreseeable effect on the behavior and personal responsibility of children.
6. The implementation of this proposed rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be submitted no later than 4:30 p.m., January 24, 2002. A public hearing will be held on January 25, 2002, at 2:30 p.m. in the Legal Conference room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana 70802.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Federal Income Tax Reduction**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The implementation of this proposed regulation, which clarifies the application of the federal income tax deduction to individual income taxpayers, will have no impact on the agency's costs.

The implementation of this proposed regulation will have no impact upon any local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections for the state as a result of this proposed regulation.

There should be no effect on revenue collections of local governmental units as a result of this regulation.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no costs or economic benefits that directly affect persons or non-governmental groups as a result of this proposed regulation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0201#032

H. Gordon Monk
Staff Director
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Revenue**
**Policy Services Division**

Partnership Composite Returns and Payments
(LAC 61:I.1401)

Under the authority of R.S. 47:201.1 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1401 relative to composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members.

Act 21 of the 2000 Second Extraordinary Session of the Louisiana Legislature enacted R.S. 47:201.1 to require certain partnerships and limited liability companies with nonresident partners or members to file composite returns and make composite payments of tax for nonresident partners or members who do not agree to file and pay Louisiana income tax on their own behalf. This rule will provide guidance concerning which partnerships and limited liability companies must file composite returns and make composite payments; when composite returns and payments are due; which partners or members are to be included on the composite return; and how partners or members who do not wish to be included in a composite return can enter into an agreement with the Department of Revenue to file and pay on their own behalf. This rule will also allow certain publicly traded partnerships to request the secretary's permission to file a composite return and make a composite payment on behalf of all partners of the partnership, including residents and corporations.

The text of this proposed rule can be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

**Family Impact Statement**

The proposed adoption of LAC 61:I.1401, regarding partnership composite returns and composite payments of tax made by a partnership or limited liability company on

behalf of nonresident partners or members 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, the implementation of this proposed rule will have 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 this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. February 26, 2002. A public hearing will be held on Wednesday, February 27, 2002, at 1:30 p.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Partnership Composite Returns and Payments**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The implementation of this proposed regulation will have no impact upon any local governmental units.

The implementation of this proposed regulation, which requires certain entities taxed as partnerships to file composite returns, will have a minor impact on the agency's costs. The number of returns is expected to be small. The primary cost will be the cost of examining the returns for names of nonresident natural persons not filing individual income tax returns. There will be minimal costs associated with storing the returns and agreements signed by partners. In the future, there will be the cost of entering the information into the information data storage. These costs are expected to be minimal and will be absorbed utilizing existing resources.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of local governmental units as a result of this proposed regulation. There should be some increase in revenue collections for the state due to improved compliance of nonresident partners and members reporting income from Louisiana sources. The information provided from the composite returns will necessitate some audits that should generate additional revenue. The size of that increase cannot be determined.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Partnerships and limited liability companies with nonresident partners or members that have business activities within the state will have the cost of preparing the composite return or filing agreements from nonresident partners or members.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

| | |
|---|---|
| Cynthia Bridges | H. Gordon Monk |
| Secretary | Staff Director |
| 0201#033 | Legislative Fiscal Office |

**NOTICE OF INTENT**

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

TANF Initiatives (LAC 67:III.5507, 5511, 5541, and 5547)

The Department of Social Services, Office of Family Support, proposes to adopt LAC 67:III, Subpart 15, §§5507, 5511, 5541, and 5547.

The Notice of Intent to adopt these sections was published in November 2001. However, the sections will not be included in that final rule but are herein included as a separate rule for the reason explained: the agency has determined that eligibility factors as originally published for these TANF Initiatives were not consistent with the Memorandum of Understanding which implemented each initiative. (These "corrections" were part of an emergency rule effective November 30, 2001, published in the December 2001 *Louisiana Register*.)

**Title 67**
**SOCIAL SERVICES**
**Part III. Office of Family Support**
**Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives**
**Chapter 55. TANF Initiatives**
**§5507. Adult Education, Basic Skills Training, Job Skills Training, and Retention Services Program**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Workforce Commission to provide adult education, basic skills training, jobs skills training, and retention services to low income families. Employed participants will be provided child care and transportation services. Unemployed participants will be provided short-term child care and transportation services.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by providing education, training, and employment-related services to low income families in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level. Within the needy family, only the parent or caretaker relative is eligible to participate. A needy family also includes a non-custodial parent who has earned income at or below 200 percent of the federal poverty level. Families who lose FITAP eligibility because of earned income are considered needy for a period of one year following the loss of cash assistance.

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 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**§5511. Micro-Enterprise Development**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office of Women's Services to provide assistance to low-income families who wish to start their own businesses.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage. This goal will be accomplished by providing assistance to low-income families through the development of comprehensive micro-enterprise development opportunities as a strategy for moving parents into self-sufficiency.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**§5541. Court-Appointed Special Advocates**

A. OFS shall enter into a Memorandum of Understanding with the Supreme Court of Louisiana to provide services to needy children identified as abused or neglected who are at risk of being placed in foster care or, are already in foster care. Community advocates provide information gathering and reporting, determination of and advocacy for the children's best interests, and case monitoring to provide for the safe and stable maintenance of the children or return to their own home.

B. The services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the home of relatives by ensuring that the time children spend in foster care is minimized.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**§5547. Housing Services**

A. The Department of Social Services, Office of Family Support, may enter into Memoranda of Understanding or contracts to create pilot programs that provide transitional, short-term, or one-time housing services to needy families with minor children who participate in self-sufficiency activities, who are at risk of losing existing housing arrangements, who are in an emergency situation, or who face ineligibility because of increased earnings. These services can include but are not limited to: relocation assistance; costs associated with moving or relocation; down payment of deposit and/or initial month's rent; short-term continuation of a housing voucher; down payment for the purchase of a house; housing counseling and homebuyer education for prospective homeowners; or other transitional services determined in conjunction with the Department of Social Services and the Division of Administration.

B. These services meet the TANF goal to provide assistance to needy families so that children can be cared for in their own homes or the homes of relatives and the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.

C. Eligibility for services is limited to parents, legal guardians, or caretaker relatives of minor children who are members of a needy family. A needy family is one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, Housing and Urban Development (HUD)-funded services, or who has earned income at or below 200 percent of the federal poverty level.

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

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**Family Impact Statement**

This rule will have no impact on the stability and functioning of the family or on parental rights or the behavior or personal responsibility of the children and will have no impact on the budget of the affected family since benefits provided by the affected Initiatives are in the form of services.

All interested persons may submit written comments through February 27, 2002, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed rule will be held on February 27, 2002, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special

services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Gwendolyn P. Hamilton
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: TANF Initiatives**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Act 12 of the Regular Session of the Louisiana Legislature authorized the TANF Initiatives. Although the proposed initiatives were contained in a Notice of Intent published in November 2001, four of these were thereafter determined to contain errors in eligibility factors. They will not be published in the final Rule but will process now as a separate rule in accordance with the APA. Act 12 authorized a total of $16,600,000 to be funded by the TANF Block Grant to Louisiana in FY 01/02 on these four initiatives. The minimal cost of publishing the rule is routinely included in the agency's budget. Future expenditures are subject to legislative appropriation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no impact on revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no resulting costs or economic benefits to any persons or nongovernmental groups secondary to this proposed rule. The assistance to eligible clients is nearly 100 percent in the form of services. However, a long term objective of the initiatives is economic improvement of the targeted families units.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment. Any new positions for these initiatives are at the discretion of the TANF partners and none are known to the agency at this time.

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| Ann Williamson | H. Gordon Monk |
| Assistant Secretary | Staff Director |
| 0201#062 | Legislative Fiscal Office |

**NOTICE OF INTENT**

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

Harvest of Mullet (LAC 76:VII.343)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules for the transfer of a mullet permit in accordance with R.S. 56:333(H).

**Title 76**
**WILDLIFE AND FISHERIES**
**Part VII. Fish and Other Aquatic Life**
**Chapter 3. Saltwater Sport and Commercial Fishing**
**§343. Rules for Harvest of Mullet**

A. - E.3. …

4. Notwithstanding LAC 76:VII.343.E.2, the department, upon application from an individual who is currently permitted to commercially take mullet, may transfer a valid mullet permit under the following requirements and conditions:

a. The transferee must possess and provide the department his/her social security number.

b. The transferee must possess a valid commercial fishing license and shall provide proof that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in the calendar year immediately prior to the year of application. Proof shall be for the tax year immediately prior to the application for transfer, and shall be in the form of an IRS transcript stamped by the local office, plus a copy of the applicant's personal file copy of his or her completed tax return for that year including all schedules and Form W-2s.

c. The transferee shall not currently possess a mullet permit nor have been permanently barred from the mullet fishery.

d. The transferor and the transferee each must certify that there shall be no financial gain realized for the transfer of such license or permit in accordance with department guidelines.

e. Any mullet permit found to have been transferred for financial gain shall be rendered void, shall immediately be surrendered to the department, and shall not be reissued.

5. In the case of a proven physical hardship, the department, upon written request from an individual who is currently permitted to commercially take mullet, may transfer a valid mullet permit into the name of the spouse, parent/legal guardian, or child/legal dependent of such person under the following requirements and conditions:

a. A mullet permit holder shall make a written request that includes the name, address and social security number of both the permit holder and the person to whom the license is requested to be transferred and shall set forth in detail the reasons justifying the request.

b. The mullet permit holder must present documentation sufficient to prove relationship as being the spouse, parent/legal guardian, or child/legal dependent, between the permit holder and the person to whom the permit is to be transferred. Examples of documents tending to establish such proof would include marriage license, birth certificate and/or judgment of legal guardianship.

c. The mullet permit holder must provide a signed statement from the treating physician setting forth the specific nature and extent of the disability together with a statement that the condition prevents participation in commercial fishing activities.

F. A valid mullet permit may only be transferred from a mullet permit holder who has no pending mullet charges for violating any provisions of R.S. 56:333 or any commission rule or regulation adopted pursuant to R.S. 56:333 after August 15, 2001. The provisions of R.S. 56:333.F shall apply to permit transfer recipients. Permits under suspension or revocation shall not be transferable during any suspension or revocation period.

G. Any person who transfers a mullet permit shall be precluded thereafter from obtaining a mullet permit whether by transfer or other method.

H. General Provisions. Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the

possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

I. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:325.1, R.S. 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992) amended LR 21:37 (January 1995), LR 22:236 (March 1996), LR 24:359 (February 1998), LR 26:2332 (October 2000), LR 28:

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 Janis Landry, License Section, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, March 7, 2002.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Thomas M. Gattle, Jr.
Chairman

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
## RULE TITLE: Harvest of Mullet

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation costs of the proposed rule to the state are estimated to be negligible due to the small number of anticipated transfers and lack of incentives associated with a transfer. Local governmental units will not be impacted.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenues to state or local governmental units from the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will only affect commercial fishers who would like to participate in the mullet fishery but cannot due to current qualifying criteria. Those commercial fishers, who meet the requirements and conditions of the proposed rule and are able to find a valid mullet permit holder willing to transfer his/her mullet permit, will be able to obtain a mullet permit. No additional costs will be incurred from the proposed rule except for the normal cost of purchasing a mullet permit. Individuals who voluntarily transfer their mullet permit to a qualified commercial fisher forgo any benefits associated with their permit. Qualified commercial fishers who obtain a mullet permit under the proposed rule will obtain the opportunity to realize economic benefits from being able to harvest and sell their mullet catch to willing buyers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment in the public or private sector.

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| James L. Patton | Robert E. Hosse |
| Undersecretary | General Government Section Director |
| 0201#059 | Legislative Fiscal Office |

## NOTICE OF INTENT

### Department of Wildlife and Fisheries
### Wildlife and Fisheries Commission

Hunting Preserve Regulations (LAC 76:V.305)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend the rules governing hunting preserves.

**Title 76**
**WILDLIFE AND FISHERIES**
**Part V. Wild Quadrupeds and Wild Birds**
**Chapter 3. Wild Birds**
**§305. Hunting Preserve Regulations**

A. As provided by R.S. 56:651, the department may issue a license to operate Hunting Preserves. Hunting preserves are to be operated under the following regulations.

1. Application Requirements

a. Application shall be made in writing on forms provided by the department.

b. Applicant must provide proof of ownership or verification of exclusive hunting rights from the landowner of the property the hunting preserve is to be operated. This is to be returned with the application.

c. All applicants, including applicants for renewal as required by the department, must provide a written operational plan detailing the type(s) of birds to be released, the method(s) and time of release, and location(s) of release. A description of hunting activities that occur or are likely to occur on the preserve and surrounding property must also be included. In the case of hunting preserves approved to utilize mallards, a map must be included in the operational plan which indicates the release site, water areas, and shooting areas. A license will not be issued until the operational plan has been approved by the department. Deviation from the approved operational plan is permitted only with written consent of the department.

d. The department may revoke/deny any hunting preserve license for failure to comply with any fish or wildlife laws, for reasons relating to disease or public health, for deviation from an approved operational plan, or for failure to abide by the rules and regulations established for this hunting preserve program. Revocation/denial shall be for a minimum of one entire hunting preserve season.

e. New applications must be received prior to August 1 for operation during the forthcoming hunting preserve season.

2. Suitability of Area for Use as a Hunting Preserve

a. No license for a hunting preserve shall be issued until an on-site investigation has been completed by the department and the department has determined that the property is suitable for the purpose of the proposed hunting preserve. The department shall base its determination on whether or not the proposed shooting area will cause conflicts with wild migratory game bird hunting, or be in violation of state and federal regulations concerning the feeding of migratory waterfowl or the use of live decoys, that the establishment of the shooting area will be in the public interest, and that the operation of a hunting preserve at the location specified in the application will not have a detrimental effect upon wild migratory or resident game birds.

b. No license shall be issued for any hunting preserve situated on a marsh, lake, river or any other place where there are concentrations of wild waterfowl or if its operations are likely to result in attracting such concentrations of wild waterfowl.

c. No hunting preserve using mallards shall be located within five miles of any wildlife area with significant waterfowl concentrations owned or leased by the state or federal government or by non-profit conservation organizations.

d. Licenses for hunting preserves using mallards will not be issued in the coastal zone, defined as that area south of I-10 from the Texas state line to Baton Rouge, south of I-12 from Baton Rouge to Slidell and south of I-10 from Slidell to the Mississippi state line.

e. No license shall be issued for the use of pheasants on any hunting preserve situated within areas with medium to high turkey populations. In areas with low turkey populations and low potential for expansion, pheasants may be used. This determination will be made at the local level by a department biologist in consultation with the turkey study leader. Agricultural areas contiguous to occupied turkey habitat may use pheasants if the preserve boundaries are at least one-half mile from the nearest woodland.

f. The licensee is responsible for notifying the department of changes in activities or conditions that may affect the suitability of the property for a hunting preserve. If at any time, the department determines that activities or conditions on the hunting preserve or surrounding property, make the property unsuitable for a hunting preserve, or that continued operation of the hunting preserve is not consistent with these regulations, the department may immediately revoke the hunting preserve license, or require modification of the operational plan.

g. Applicants and licensees are advised that hunting preserve licenses are issued following a review and recommendations by department staff. Licenses are issued on an annual basis for a 12-month term only. Changing conditions, including those such as climatic, biological, and land use, which may be beyond the control of the applicant/licensee, may result in certain applications not being granted, or licenses not being renewed. Annual renewal of hunting preserve licenses cannot be assured and applicants/licensees are cautioned to take these factors into consideration when making any investments or commitments which may relate to the continued issuance of a hunting preserve license.

3. Types of Releases Allowed

a. The use of mallards on hunting preserves is limited to those operations whereby domestic mallards are released in a controlled fashion to proceed over positioned shooters in their flight path. No direct releases of any species of domesticated waterfowl into the wild for any sporting purposes or for any reasons are permitted within the state.

b. Quail may be released after September 1 on hunting preserves for the purpose of providing coveys for hunting. Pheasants and chukars may not be released on hunting preserves more than one day prior to a scheduled hunt. No direct releases of domesticated game birds, including but not limited to quail, pheasants and chukars, into the wild for purpose of population establishment are permitted within the state.

c. All quail and mallards must be banded in accordance with R.S. 56:654(4) prior to release.

4. Inspection of Permitted Areas and Domesticated Game Birds

a. Applicant must provide proof that the birds to be released originated from a source flock participating in the National Poultry Improvement Plan (NPIP) within 365 days prior to release and have not been in contact with birds from non-NPIP sources.

b. The premises of game bird production facilities and/or holding pens may be inspected by the department or by a designated agent for assessment of health of birds and sanitation of facilities. General pen requirements must conform to those adopted by the Louisiana Wildlife and Fisheries Commission for game breeders.

c. Accurate records of animal husbandry and mortality must be maintained at production/holding facilities and will be subject to periodic inspection by the department.

d. Every person who brings or causes to be brought into this state live domestically reared game birds for shooting purposes must comply with Livestock Sanitary Board regulations on livestock, poultry, and wild animals (R.S. 7:11705, 11767 and 11789). A copy of the health certificate must also be forwarded to the Department of Wildlife and Fisheries within 10 days for each shipment of birds. Any shipment of birds not accompanied by a health certificate shall be destroyed or returned to the place of origin by the importer at his sole cost and responsibility.

5. Hunting Licenses Requirements. A basic hunting license or hunting preserve license is required of all persons hunting on hunting preserves. In addition, a Louisiana Waterfowl Hunting License (formerly known as a state duck stamp) is required as provided by law of all persons taking or hunting mallards on any hunting preserves.

6. Season Dates. The season during which shooting will be permitted shall be set by the Louisiana Wildlife and Fisheries Commission. The current season is fixed for the period of October 1 through April 30.

7. Shooting Hours. Shooting hours for hunting preserves shall be set by the Louisiana Wildlife and Fisheries Commission. The current hours are one-half hour before sunrise to sunset.

8. Methods of Take

a. Shotguns 10 gauge or smaller capable of holding no more than three shells in the magazine and chamber combined; nontoxic shot is required for hunting mallards on hunting preserves approved for use of mallards;

b. muzzle-loading shotguns;
c. falconry;
d. archery equipment

B. Existing state laws R.S. 56:651-659 and federal law 50 CFR 21:13 address bird banding, bird identification, bird transportation, reports and records and other issues. Compliance with these state and federal laws are mandatory. Hunting and taking of wild migratory and wild resident game birds on licensed hunting preserves must conform to all state and federal hunting regulations, including, but not limited to: non-toxic shot requirements, federal duck stamp requirements, live decoy prohibition, seasons, and bag limits.

C. Changes in Rules. The Louisiana Wildlife and Fisheries Commission, Louisiana Department of Agriculture and the U.S. Fish and Wildlife Service may from time to time make changes in these rules and it is the responsibility of the licensee to apprise himself of any changes and to abide by them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:651-659.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1136 (October 1992), amended LR 28:

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 Tommy Prickett, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Tuesday, March 5, 2002.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Thomas M. Gattle, Jr.
Chairman

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
## RULE TITLE: Hunting Preserve Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

During FY 02-03 the implementation cost to the Department of Wildlife and Fisheries is estimated at $750, or the equivalent of three man-days of work by existing personnel. Cost in subsequent years is estimated at $250 per year.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Each year 20-30 hunting preserve licenses are issued. Cost to these licensees will be minimal. Current licensees will probably invest about 1 hour of time in FY 02-03 to comply with the new requirements. Less time will be required in subsequent years. New applicants (5-10 per year) are expected to spend 1 hour or less to comply when they apply for a hunting preserve license.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is anticipated.

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|---|---|
| James L. Patton | Robert E. Hosse |
| Undersecretary | General Government Section Director |
| 0201#060 | Legislative Fiscal Office |

# Legislation

## LEGISLATION

**State Legislature**
**2001 Regular Session**

Administrative Procedure Act (R.S. 49:950 et seq.)

Editor's Note: The following Act is the finished version of the APA as stored in the House of Representatives' Database.

### Title 49. STATE ADMINISTRATION

**Chapter 13. Administrative Procedure**

**§950. Title and Form of Citation**

This Chapter shall be known as the Administrative Procedure Act and may be cited as the Administrative Procedure Act.

*Added by Acts 1982, No. 129, §1*

**§951. Definitions**

As used in this Chapter:

(1) "Adjudication" means agency process for the formulation of a decision or order.

(2) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in Article VI, Section 44 of the Louisiana Constitution, and any board, commission, department, agency, officer, or other entity thereof, and the courts.

(3) "Decision" or "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing, and including non-revenue licensing, when the grant, denial, or renewal of a license is required by constitution or statute to be preceded by notice and opportunity for hearing.

(4) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency, except that an agency is a "person" for the purpose of appealing an administrative ruling in a disciplinary action brought pursuant to Title 37 of the Louisiana Revised Statutes of 1950 prior to the final adjudication of such disciplinary action.

(6) "Rule" means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. "Rule" includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

(7) "Rulemaking" means the process employed by an agency for the formulation of a rule. Except where the context clearly provides otherwise, the procedures for adoption of rules and of emergency rules as provided in R.S. 49:953 shall also apply to adoption of fees. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this Subsection.

*Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1997, No. 1224, §1.*

**§952. Public Information; Adoption of Rules; Availability of Rules and Orders**

Each agency which engages in rulemaking shall:

(1) File with the Department of the State Register a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

(3) Make available for public inspection all rules, preambles, responses to comments, and submissions and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions and publish an index of such rules, preambles, responses to comments, submissions, statements, and interpretations on a regular basis.

(4) Make available for public inspection all final orders, decisions, and opinions.

*Acts 1966, No. 382, §2, eff. July 1, 1967. Amended by Acts 1978, No. 252, §1; Acts 1979, No. 578, §1, eff. July 18, 1979; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 1993, No. 386, §1.*

**§953. Procedure for Adoption of Rules**

A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1)(a) Give notice of its intended action and a copy of the proposed rules at least ninety days prior to taking action on the rule. The notice shall include:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved;

(ii) A statement, approved by the legislative fiscal office, of the fiscal impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no fiscal impact will result from such proposed action;

(iii) A statement, approved by the legislative fiscal office, of the economic impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no economic impact will result from such proposed action;

(iv) The name of the person within the agency who has the responsibility for responding to inquiries about the intended action;

(v) The time when, the place where, and the manner in which interested persons may present their views thereon; and

(vi) A statement that the intended action complies with the statutory law administered by the agency, including a citation of the enabling legislation.

(vii) A statement indicating whether the agency has prepared a preamble which explains the basis and rationale for the intended action, summarizes the information and data supporting the intended action, and provides information concerning how the preamble may be obtained.

(viii) A statement concerning the impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

(b)(i) The notice shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least one hundred days prior to the date the agency will take action on the rule.

(ii) Upon publication of the notice, copies of the full text of the proposed rule shall be available from the agency proposing the rule upon written request within two working days.

(c) Notice of the intent of an agency to adopt, amend, or repeal any rule and the approved fiscal and economic impact statements, as provided for in this Subsection, shall be mailed to all persons who have made timely request of the agency for such notice, which notice and statements shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule change is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(2)(a) Afford all interested persons reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested within twenty days after publication of the rule as provided in this Subsection, by twenty-five persons, by a governmental subdivision or agency, by an association having not less than twenty-five members, or by a committee of either house of the legislature to which the proposed rule change has been referred under the provisions of R.S. 49:968.

(b)(i) Make available to all interested persons copies of any rule intended for adoption, amendment, or repeal from the time the notice of its intended action is published in the Louisiana Register. Any hearing pursuant to the provisions of this Paragraph shall be held no earlier than thirty-five days and no later than forty days after the publication of the Louisiana Register in which the notice of the intended action appears. The agency shall consider fully all written and oral comments and submissions respecting the proposed rule.

(ii) The agency shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written or oral comments and submissions. In addition to the response to comments, the agency may prepare a preamble explaining the basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions. Such preamble and response to comments and submissions shall be furnished to the respective legislative oversight subcommittees at least five days prior to the day the legislative oversight subcommittee hearing is to be held on the proposed rule, and shall be made available to interested persons no later than one day following their submission to the appropriate legislative oversight subcommittee. If no legislative oversight hearing is to be held, the agency shall issue a response to comments and submissions and preamble, if any, to any person who presented comments or submissions on the rule and to any requesting person not later than fifteen days prior to the time of publication of the final rule.

(iii) The agency shall, upon request, make available to interested persons the report submitted pursuant to R.S. 49:968(D) no later than one working day following the submittal of such report to the legislative oversight subcommittees.

(3)(a) For the purposes of this Subsection, the statement of fiscal impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such fiscal impact statement shall include a statement of the receipt, expenditure, or allocation of state funds or funds of any political subdivision of the state.

(b) For the purposes of this Subsection, the statement of economic impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such economic impact statements shall include an estimate of the cost to the agency to implement the proposed action, including the estimated amount of paperwork; an estimate of the cost or economic benefit to all persons directly affected by the proposed action; an estimate of the impact of the proposed action on competition and the open market for employment, if applicable; and a detailed statement of the data, assumptions, and methods used in making each of the above estimates.

B.(1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided in Subsection A of this Section and within five days of adoption states in writing to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Department of the State Register, its reasons for that finding,

it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The provisions of this Paragraph also shall apply to the extent necessary to avoid sanctions or penalties from the United States, or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs. The agency statement of its reason for finding it necessary to adopt an emergency rule shall include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria provided in this Paragraph for adoption of an emergency rule.

(2) Notice of the emergency rule shall be mailed to all persons who have made timely request of the agency for notice of rule changes, which notice shall be mailed within five days of adoption of the emergency rule. The office of the state register may omit from the Louisiana Register any emergency rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the emergency rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register contains a notice stating the general subject matter of the omitted emergency rule, the reasons for the finding of the emergency submitted by the agency, and stating how a copy thereof may be obtained.

(3) The validity of an emergency rule or fee may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located. The agency shall be made a party to the action. An action for a declaratory judgment under this Paragraph may be brought only by a person to whom such rule or fee is applicable or who would be adversely affected by such rule or fee and only on the grounds that the rule or fee does not meet the criteria for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. The court shall declare the rule or fee invalid if it finds that there is not sufficient evidence that such rule or fee must be adopted on an emergency basis for one or more of the reasons for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. Notwithstanding any other provision of law to the contrary, the emergency rule or fee shall remain in effect until such declaratory judgment is rendered. The provisions of R.S. 49:963 shall not apply to any action brought pursuant to this Paragraph. The provisions of this Paragraph are in addition to R.S. 49:963 and shall not limit any action pursuant to R.S. 49:963.

(4)(a) Within sixty days after adoption of an emergency rule or fee, an oversight subcommittee of either house may conduct a hearing to review the emergency rule or fee and make a determination of whether such rule or fee meets the criteria for an emergency rule or fee as provided in Paragraph (1) of this Subsection and those determinations as provided in R.S. 49:968(D)(3). If within such time period an oversight subcommittee finds an emergency rule or fee unacceptable, it shall prepare a written report containing a copy of the proposed rule or proposed fee action and a summary of the determinations made by the committee and transmit copies thereof as provided in R.S. 49:968(F)(2).

(b) Within sixty days after adoption of an emergency rule or fee, the governor may review such rule or fee and make the determinations as provided in Subparagraph (a) of this Paragraph. If within such time period the governor finds an emergency rule or fee unacceptable, he shall prepare a written report as provided in Subparagraph (a) and transmit copies thereof to the agency proposing the rule change and the Louisiana Register no later than four days after the governor makes his determination.

(c) Upon receipt by the agency of a report as provided in either Subparagraph (a) or (b) of this Paragraph, the rule or fee shall be nullified and shall be without effect.

C. An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, considerations, and disposition. Within ninety days after submission of a petition, the agency shall either deny the petition in writing, stating reasons for the denial, or shall initiate rule making proceedings in accordance with this Chapter.

D. When a rule is adopted, amended, or repealed in compliance with federal regulations, the adopting agency's notice of intent and the actual text of the rule as published in the Louisiana Register, must be accompanied by a citation of the Federal Register issue in which the determining federal regulation is published, such citation to be by volume, number, date, and page number.

E. Beginning January 1, 1987, no agency shall adopt, amend, or repeal any rule if the accompanying fiscal impact statement approved by the Legislative Fiscal Office indicates that said rule change would result in any increase in the expenditure of state funds, unless said rule is adopted as an emergency rule pursuant to the requirements of this Section or unless the legislature has specifically appropriated the funds necessary for the expenditures associated with said rule change.

F.(1) Notwithstanding any other provision of this Chapter to the contrary, if the Department of Environmental Quality proposes a rule that is not identical to a federal law or regulation or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall adopt and promulgate such proposed rule separately from any proposed rule or set of proposed rules that is identical to a federal law or regulation or required for compliance with a federal law or regulation. However, if the only difference between the proposed rule or set of proposed rules and the corresponding federal law or regulation is a proposed fee, the Department of Environmental Quality shall not be required to adopt and promulgate such proposed rule or set of proposed rules separately. For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(2) When the Department of Environmental Quality proposes a rule that is not identical to a corresponding federal law or regulation, or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall provide a brief summary which explains the basis and rationale for the proposed rule, identifies the data and evidence, if any, upon which the rule is based, and identifies any portions of the proposed rule that differ from federal law or regulation if there is a federal law or regulation which is not identical but which corresponds substantially to the proposed rule. Such summary shall be

provided along with the notice of intent and shall be published in the Louisiana Register or made available along with the proposed rule as provided in Item A(1)(b)(ii) of this Section. The Department of Environmental Quality may also provide such a summary when proposing a rule identical to a corresponding federal law or regulation or proposing a rule which is required for compliance with federal law or regulation to explain the basis and rationale for the proposed rule.

(3) Notwithstanding any other provision of this Chapter to the contrary, when the Department of Environmental Quality proposes a rule that is identical to a federal law or regulation applicable in Louisiana, except as provided in Paragraph (4) of this Subsection, it may use the following procedure for the adoption of the rule:

(a) The department shall publish a notice of the proposed rule at least sixty days prior to taking action on the rule as provided below. The notice, which may include an explanation of the basis and rationale for the proposed rule, shall include all of the following:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved.

(ii) A statement that no fiscal or economic impact will result from the proposed rule.

(iii) The name of the person within the department who has responsibility for responding to inquiries about the intended action.

(iv) The time, place, and manner in which interested persons may present their views thereon including the notice for a public hearing required by R.S. 30:2011(D)(1).

(v) A statement that the intended action complies with the law administered by the department, including a citation of the specific provision, or provisions, of law which authorize the proposed rule.

(b) Notice of the proposed rule shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least seventy days prior to the date the department proposes to formally adopt the rule. The office of the state register may omit from the Louisiana Register any such proposed rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the Louisiana Register contains a notice stating the general subject matter of the omitted proposed rule, the process being employed by the department for adoption of the proposed rule, and stating how a copy of the proposed rule may be obtained.

(c) Notice of the intent of the department to adopt the rule shall be mailed to all persons who have made timely request for such notice, which notice shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(e) The department shall afford all interested persons an opportunity to submit data, views, comments, or arguments related to the proposed rule, in writing, during a period of no less than thirty days. The department shall consider fully all written comments and submissions respecting the proposed rule.

(f) The department shall make available to all interested persons copies of the proposed rule from the time the notice of its adoption is published in the Louisiana Register.

(g) The department shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written comments and submissions and specifically addressing any assertion that the proposed rule is not identical to the federal law or regulation upon which it is based. The department shall issue such response to comments and submissions to any person who presented comments or submissions on the rule and to any requesting person no later than fifteen days prior to the time of publication of the final rule.

(h) No later than fifteen days prior to the time of publication of the final rule in the Louisiana Register, the secretary or any authorized assistant secretary of the department shall (i) certify, under oath, to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, the chairman of the House Committee on the Environment, the chairman of the Senate Committee on Environmental Quality, and the office of the state register that the proposed rule is identical to a specified federal law or regulation applicable in Louisiana and (ii) furnish the chairman of the Senate Committee on Environmental Quality and the chairman of the House Committee on the Environment the response to comments and submissions required under Subparagraph (g) of this Paragraph, together with a copy of the notice required under Subparagraph (a) of this Paragraph.

(i) Unless specifically requested, in writing, by the chairman of the House Committee on the Environment or the chairman of the Senate Committee on Environmental Quality within ten days of the certification provided under Subparagraph (h) of this Paragraph, there shall be no legislative oversight of the proposed rule. If, however, legislative oversight is properly requested, R.S. 49:968 and Items A(2)(b)(ii) and (iii) of this Section, shall thereafter apply with respect to the proposed rule.

(j) In the absence of legislative oversight, the proposed rule may be adopted by the Department of Environmental Quality no earlier than sixty days, nor later than twelve months, after the official notice of the proposed rule was published in the Louisiana Register; provided, however, that the proposed rule shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption.

(4) The procedures set forth in Paragraph (3) of this Subsection for the adoption by the Department of Environmental Quality of rules identical to federal laws or regulations applicable in Louisiana shall not be available for the adoption of any rules creating or increasing fees.

G.(1) Prior to or concurrent with publishing notice of any proposed policy, standard, or regulation pursuant to Subsection A of this Section and prior to promulgating any policy, standard, or final regulation whether pursuant to R.S. 49:954 or otherwise under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the Department of Environmental Quality, after August 15, 1995, shall publish a report, or a summary of the report, in the Louisiana Register which includes:

(a) A statement identifying the specific risks being addressed by the policy, standard, or regulation and any published, peer-reviewed scientific literature used by the department to characterize the risks.

(b) A comparative analysis of the risks addressed by the policy, standard, or regulation relative to other risks of a similar or analogous nature to which the public is routinely exposed.

(c) An analysis based upon published, readily available peer-reviewed scientific literature, describing how the proposed and final policy, standard, or regulation will advance the purpose of protecting human health or the environment against the specified identified risks.

(d) An analysis and statement that, based on the best readily available data, the proposed or final policy, standard, or regulation presents the most cost-effective method practically achievable to produce the benefits intended regarding the risks identified in Subparagraph (a) of this Paragraph.

(2) No regulation shall become effective until the secretary complies with the requirements of Paragraph (1) of this Subsection.

(3) This provision shall not apply in those cases where the policy, standard, or regulation:

(a) Is required for compliance with a federal law or regulation.

(b) Is identical to a federal law or regulation applicable in Louisiana.

(c) Will cost the state and affected persons less than one million dollars, in the aggregate, to implement.

(d) Is an emergency rule under Subsection B of this Section.

(4) For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(5) In complying with this Section, the department shall consider any scientific and economic studies or data timely provided by interested parties which are relevant to the issues addressed herein and the proposed policy, standard, or regulation being considered.

*Acts 1966, No. 382, §3, eff. July 1, 1967. Amended by Acts 1974, No. 284, §1, eff. Jan. 1, 1975; Acts 1975, No. 730, §1; Acts 1976, No. 279, §1; Acts 1978, No. 252, §1; Acts 1980, No. 392, §1. Acts 1983, No. 713, §1; Acts 1984, No. 953, §1; Acts 1985, No. 371, §1, eff. July 9, 1985; Acts 1986, 1st Ex. Sess., No. 11, §1, eff. Jan. 1, 1987; Acts 1987, No. 853, §1; Acts 1990, No. 1063, §1; Acts 1990, No. 1085, §§1 and 2, eff. July 31, 1990; Acts 1991, No. 104, §1, eff. June 30, 1991; Acts 1993, No. 119, §1; Acts 1993, No. 274, §1; Acts 1993, No. 386, §1; Acts 1995, No. 512, §1; Acts 1995, No. 642, §1; Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, §3, eff. May 7, 1996; Acts 1999, No. 1183, §1.*

**§954. Filing; Taking Effect of Rules**

A. No rule adopted on or after January 1, 1975, is valid unless adopted in substantial compliance with this Chapter. Each rule making agency shall file a certified copy of its rules with the Department of the State Register. No rule, whether adopted before, on, or after January 1, 1975, shall be effective, nor may it be enforced, unless it has been properly filed with the Department of the State Register. No rule, adopted on or after November 1, 1978, shall be effective, nor may it be enforced, unless prior to its adoption a report relative to the proposed rule change is submitted to the appropriate standing committee of the legislature or to the presiding officers of the respective houses as provided in R.S. 49:968. No rule, adopted on or after September 12, 1980, shall be effective, nor may it be enforced, unless the approved economic and fiscal impact statements, as provided in R.S. 49:953A, have been filed with the Department of State Register and published in the Louisiana Register. The inadvertent failure to mail notice and statements to persons making request for such mail notice, as provided in R.S. 49:953, shall not invalidate any rule adopted hereunder. A proceeding under R.S. 49:963 to contest any rule on the grounds of noncompliance with the procedures for adoption, as given in this Chapter, must be commenced within two years from the date upon which the rule became effective.

B. Each rule hereafter adopted shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption, except that:

(1) If a later date is required by statute or specified in the rule, the later day is the effective date.

(2) Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective on the date of its adoption, or on a date specified by the agency to be not more than sixty days future from the date of its adoption, provided written notice is given within five days of the date of adoption to the governor of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, and the president of the Senate, and the Department of the State Register as provided in R.S. 49:953(B). Such emergency rule shall not remain in effect beyond the publication date of the Louisiana Register published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in said issue; provided, however, that any emergency rule so published shall not be effective for a period longer than one hundred twenty days, except as provided by R.S. 49:967(D), but the adoption of an identical rule under Paragraphs (1), (2) and (3) of Subsection A of R.S. 49:953 is not precluded. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

*Acts 1966, No. 382, §4, eff. July 1, 1967. Amended by Acts 1968, No. 474, §1; Acts 1974, No. 284, §1, eff. Jan. 1, 1975; Acts 1975, No. 730, §1; Acts 1978, No. 252, §1; Acts 1980, No. 392, §1; Acts 1990, No. 248, §1; Acts 1990, No. 1085, §1, eff. July 31, 1990.*

**§954.1. Louisiana Administrative Code and Louisiana Register; Publication; Distribution; Copies; Index; Interagency Rules**

A. The Department of the State Register shall compile, index, and publish a publication to be known as the Louisiana Administrative Code, containing all effective rules adopted by each agency subject to the provisions of this Chapter, and all boards, commissions, agencies and departments of the executive branch, notwithstanding any other provision of law to the contrary. The Louisiana Administrative Code shall also contain all executive orders issued by the governor on or after May 9, 1972, which are in effect at the time the Louisiana Administrative Code is published. The Louisiana Administrative Code shall be supplemented or revised as often as necessary and at least once every two years.

B. The Department of the State Register shall publish at least once each month a bulletin to be known as the Louisiana Register which shall set forth the text of all rules filed during the preceding month and such notices as shall have been submitted pursuant to this Chapter. It shall also set forth all executive orders of the governor issued during the preceding month and a summary or digest of and fiscal note prepared for each such order as required by the provisions of R.S. 49:215. In addition, the Department of the State Register may include in the Louisiana Register digests or summaries of new or proposed rules; however, if any conflict should arise between the written digest of a rule and the rule, the rule shall take precedence over the written digest.

C. The Department of the State Register shall publish such rules, notices, statements, and other such matters as submitted by the rulemaking agency without regard to their validity. However, the State Register may omit from the Louisiana Register or Louisiana Administrative Code any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register or Louisiana Administrative Code, as the case may be, contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

D. One copy, or multiple copies if practical, of the Louisiana Register and Louisiana Administrative Code shall be made available upon request to state depository libraries free of charge, and to other agencies or persons at prices fixed by the department of the state register to recover all or a portion of the mailing and publication costs. Notwithstanding the provisions of R.S. 49:951(2) of this Chapter to the contrary, the department of the state register shall provide free copies of the Louisiana Register and the Louisiana Administrative Code to the David R. Poynter Legislative Research Library, the Senate Law Library, and the Huey P. Long Memorial Law Library.

E. The Department of the State Register shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Louisiana Administrative Code.

F. The Department of the State Register may publish advertisements for bids and other legal notices in the Louisiana Register in addition to other publications thereof required by law.

G. The Department of the State Register is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this Section.

H. The governor shall be the publisher of the Louisiana Administrative Code and Louisiana Register provided for through the Department of the State Register.

*Added by Acts 1974, No. 284, §1, eff. Jan. 1, 1975. Amended by Acts 1975, No. 730, §1; Acts 1976, No. 279, §1; Acts 1978, No. 252, §1; Acts 1982, No. 687, §1, eff. Aug. 2, 1982; Acts 1988, No. 604, §1, eff. July 14, 1988; Acts 1988, No. 937, §1, eff. July 26, 1988; Acts 1990, No. 9, §2; Acts 1993, No. 119, §1.*

**§954.2. Unified Oil and Gas Development Regulatory Index; Summary**

A. All regulatory agencies which have authority to issue or promulgate any general or special rule or regulation, or which issue, monitor compliance with, or otherwise regulate any permit or license, relative to oil and gas development, all as defined in this Section, shall index and summarize the rules or regulations in a manner which, if the language of the rule or regulation has general applicability to other types of businesses or other situations, plainly state or otherwise indicate:

(1) The extent of their applicability to oil and gas development.

(2) The types of permits or licenses which will be required, or which may be required, of any entity in the oil and gas development business.

B. Such index and summaries shall be filed with the office of the commissioner of conservation within the Department of Natural Resources, hereafter referred to as "the commissioner," by December 1, 1992. The commissioner shall make a written acknowledgement of his receipt of the index and summaries and the date thereof.

C. Any agency required to index and summarize its rules and regulations related to oil and gas development shall also file with the commissioner the information required in Subsection A regarding any agency rule or regulation which is finally promulgated or adopted after December 1, 1992, within twenty days of such final promulgation or adoption, along with an indication of its place in the index and summary previously filed with the commissioner.

D. The commissioner may make a written critique of any submission of an index and summaries which the commissioner determines to be unclear or confusing as it relates to oil and gas development, which critique shall contain reasons and/or clarifying questions. The agency shall respond to the critique in a form acceptable to the commissioner within twenty days. It is the intention of this Section that the various departments and offices which have authority to issue rules and regulations under law retain that authority. The commissioner shall only have the authority under this Section to critique submitted indexes and summaries so as to require a satisfactory response to his written reasons or questions concerning how they relate to oil and gas development.

E. After the commissioner has received and approved all of the indexes and summaries required to be received by December 1, 1992, he shall then proceed to merge and compile the indexes and summaries received so as to create a Unified Oil and Gas Regulatory Index. The commissioner

shall complete the index within six months. Upon completion of such unified index, the commissioner shall proceed to promulgate such index, and any subsequent amendments, in the manner provided for in this Chapter. However, the commissioner shall only make such technical revisions of the index during such procedure as is authorized by the agency which promulgated the original rule or regulation.

F. One copy of the Unified Oil and Gas Development Regulatory Index shall be made available to each of the regulatory agencies and to other persons at a reasonable price to be set by the commissioner.

G. Notwithstanding any other law to the contrary, no rule or regulation or permit or license provided for in Subsection A shall be effective, nor shall it be enforced, nor shall its content be considered by any court or any administrative hearing officer or board or other judicial or quasi-judicial body as a valid administrative construction or interpretation of any law, to the detriment of any applicant for a permit related to oil and gas development after December 1, 1992, in any civil or criminal action or proceeding if the filing, or the response to a critique by the secretary, of the index and summaries containing such rule or regulation or license or permit has not been timely made as required in this Section.

H. For purposes of this Section, the following terms shall have the following definitions:

(1) "Index and summaries" means a list of all rules and regulations in numerical order which have general or specific applicability to oil and gas development and environmental matters, with accompanying summaries indicating how the rule applies to oil and gas development.

(2) "Oil and gas development" means the activity of exploring for, locating, transporting property to an oil or gas well drilling site, and the constructing, operating, or maintaining of the land, equipment, buildings, structures, or other property at such site until the well is completed and capable of producing.

(3) "Permit or license" means any permit, license, variance, registration, compliance schedule, order, or any other grant of right or privilege, or any change, renewal, or extension thereof, relative to oil and gas development.

(4) "Regulatory agency" means any office or unit of the Department of Environmental Quality, the Department of Natural Resources, the Department of Revenue, the Mineral Board, and the Wildlife and Fisheries Commission or Department.

(5) "Rule or regulation" means any general or special rule, as that term is defined in R.S. 49:951(6), relative to oil and gas development.

*Acts 1991, No. 735, §1, eff. July 18, 1991; Acts 1992, No. 589, §1, eff. July 15, 1992.*

**§954.3. Environmental Regulatory Code**

The Department of Environmental Quality shall codify its rules and regulations in effect on March 1, 1992, in the Environmental Regulatory Code, and thereafter, shall update such codification of its rules and regulations on a quarterly basis. The secretary shall complete and offer for sale at cost the initial codification within one hundred and eighty days from March 1, 1992.

*Acts 1991, No. 735, §2, eff. July 18, 1991.*

**§955. Adjudication; Notice; Hearing; Records**

A. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall include:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

E. The record in a case of adjudication shall include:

(1) All pleadings, motions, intermediate rulings;

(2) Evidence received or considered or a resume thereof if not transcribed;

(3) A statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;

(4) Offers of proof, objections, and rulings thereon;

(5) Proposed findings and exceptions;

(6) Any decision, opinion, or report by the officer presiding at the hearing.

F. The agency shall make a full transcript of all proceedings before it when the statute governing it requires it, and, in the absence of such requirement, shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof unless the governing statute or constitution provides that it shall be furnished without cost.

G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

*Acts 1966, No. 382, §5, eff. July 1, 1967.*

**§956. Rules of Evidence; Official Notice; Oaths and Affirmations; Subpoenas; Depositions and Discovery; and Confidential Privileged Information**

In adjudication proceedings:

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

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(4) Any agency or its subordinate presiding officer conducting a proceeding subject to this Chapter shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues.

(5)(a) Any agency or its subordinate presiding officer shall have power to sign and issue subpoenas in the name of the agency requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall be issued until the party who wishes to subpoena the witness first deposits with the agency a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

(b) A subpoena issued pursuant to this Section shall be served by any agent of the agency, by the sheriff, by any other officer authorized by law to serve process in this state, by certified mail, return receipt requested, or by any person who is not a party and who is at least eighteen years of age. Witnesses subpoenaed to testify before an agency only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witness as may be fixed by the agency with reference to the value of the time employed and the degree of learning or skill required.

(c) Whenever any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the agency may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt. It shall be the duty of the judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him, to proceed to a hearing of the case; and upon such hearing, the judge shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(6) The agency or a subordinate presiding officer or any party to a proceeding before it may take the depositions of witnesses, within or without the state and may conduct discovery in all manners as provided by law in civil actions. Depositions so taken and admissions, responses, and evidence produced pursuant to discovery shall be admissible in any proceeding affected by this Chapter. The admission of such depositions, admissions, responses, and evidence may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the agency or presiding officer in accordance with the rules of evidence provided in this Chapter.

(7) Repealed by Acts 1995, No. 760, §2, eff. June 27, 1995.

(8)(a) Records and documents, in the possession of any agency or of any officer or employee thereof including any written conclusions drawn therefrom, which are deemed confidential and privileged shall not be made available for adjudication proceedings of that agency and shall not be subject to subpoena by any person or other state or federal agency.

(b) Such records or documents shall only include any private contracts, geological and geophysical information and data, trade secrets and commercial or financial data, which are obtained by an agency through a voluntary agreement between the agency and any person, which said records and documents are designated as confidential and privileged by the parties when obtained, or records and documents which are specifically exempt from disclosure by statute.

(c) Any violation of this prohibition shall be a waiver of governmental immunity from suit for damage resulting from any such disclosure.

(d) Notwithstanding the provisions of Subparagraphs (a) and (c) of this Paragraph the state boards and agencies identified in R.S. 13:3715.1(J) may make available and use records and documents, including any written conclusions drawn therefrom, which are otherwise deemed confidential or privileged and which are in the possession of such board or agency or any officer, employee, or agent thereof, or any attorney acting on its behalf in any adjudication proceedings of such agency, provided that in any case involving medical or patient records, the identity of any patient shall be maintained in confidence. Any such records shall be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates. Disclosure by such board or agency or any officer, employee, agent, or attorney acting on behalf of any of them, of any material otherwise deemed privileged or confidential under state law, which is made in response to a federal subpoena, shall not constitute a waiver of governmental immunity from suit for damages resulting from such disclosure. Such boards and agencies, including their officers, employees, agents, and attorneys, shall nevertheless assert any privilege which is recognized and applicable under federal law when responding to any such federal subpoena.

*Acts 1966, No. 382, §6, eff. July 1, 1967. Amended by Acts 1976, No. 524, §1, eff. Aug. 5, 1976; Acts 1989, No. 156, §1; Acts 1995, No. 760, §1, 2, eff. June 27, 1995; Acts 1999, No. 416, §1; Acts 1999, No. 765, §1.*

**§957. Examination of Evidence by Agency**

When in an adjudication proceeding a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, or the proposed order is not prepared by a member of the agency, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made final until a proposed order is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposed order shall be accompanied by a statement of the reasons therefor and of the disposition of each issue of fact or law necessary to the proposed order, prepared by the person who conducted the hearing or by one who has read the record. No sanction shall be imposed or order be issued except upon consideration of the whole record and as supported by and in accordance with the reliable, probative, and substantial evidence. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

*Acts 1966, No. 382, §7, eff. July 1, 1967.*

**§958. Decisions and Orders**

A final decision or order adverse to a party in an adjudication proceeding shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

*Acts 1966, No. 382, §1, eff. July 1, 1967.*

**§959. Rehearings**

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the agency, within ten days from the date of its entry. The grounds for such action shall be either that:

(1) The decision or order is clearly contrary to the law and the evidence;

(2) The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

(3) There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or

(4) There is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration, or review, and the order of the agency granting it, shall set forth the grounds which justify such action. Nothing in this Section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a subordinate deciding officer. The hearing shall be confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

*Acts 1966, No. 382, §9, eff. July 1, 1967.*

**§960. Ex Parte Consultations and Recusations**

A. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

B. A subordinate deciding officer or agency member shall withdraw from any adjudicative proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a subordinate deciding officer or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a subordinate deciding officer, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of R.S. 49:957 shall apply.

*Acts 1966, No. 382, §10, eff. July 1, 1967.*

**§961. Licenses**

A. When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Chapter concerning adjudication shall apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or

welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

*Acts 1966, No. 382, §11, eff. July 1, 1967.*

**§962. Declaratory Orders and Rulings**

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders and rulings as to the applicability of any statutory provision or of any rule or order of the agency. Declaratory orders and rulings shall have the same status as agency decisions or orders in adjudicated cases.

*Acts 1966, No. 382, §12, eff. July 1, 1967; Acts 1995, No. 947, §6, eff. Jan. 1, 1996.*

**§962.1. Judicial Review, Rule to Show Cause for Permit Applicants**

A. If the secretary does not grant or deny a permit, license, registration, variance, or compliance schedule for which the applicant had applied within the time period as provided for in R.S. 30:26 and 2022(C), R.S. 49:214.30(C)(2), and R.S. 56:6(26), the applicant has the authority, on motion in a court of competent jurisdiction, to take a rule on the secretary to show cause in not less than two nor more than thirty days, exclusive of holidays, why the applicant should not be granted the permit, license, registration, variance, or compliance schedule for which the applicant had applied. The rule may be tried out of term and in chambers.

B. In any trial or hearing on the rule, the applicant shall be entitled to a presumption that the facts as stated in the affidavit of the applicant, which shall be attached to the rule are true. The rule of the applicant shall be denied by the court only if the secretary provides clear and convincing evidence of an unavoidable cause for the delay. However, in denying the rule, the court shall decree that the secretary shall grant or deny the application within a time set by the court, or the application shall be granted without further action of the secretary or the court.

C. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the applicant granting the applicant the permit, license, registration, variance, or compliance schedule for which the applicant had applied.

D. The provisions of Subsections A, B, and C of this Section shall not apply to permit applications submitted under the Louisiana Pollutant Discharge Elimination System (LPDES) program under the Louisiana Department of Environmental Quality.

*Acts 1991, No. 828, §2; Acts 1995, No. 601, §2.*

**§963. Judicial Review of Validity or Applicability of Rules**

A.(1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located.

(2) The agency shall be made a party to the action.

B.(1) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court.

(2) The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

C. The court shall declare the rule invalid or inapplicable if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with required rulemaking procedures.

D. An action for a declaratory judgment under this Section may be brought only after the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question and only upon a showing that review of the validity and applicability of the rule in conjunction with review of a final agency decision in a contested adjudicated case would not provide an adequate remedy and would inflict irreparable injury.

E. Upon a determination by the court that any statement, guide, requirement, circular, directive, explanation, interpretation, guideline, or similar measure constitutes a rule as defined by R.S. 49:951(6) and that such measure has not been properly adopted and promulgated pursuant to this Chapter, the court shall declare the measure invalid and inapplicable. It shall not be necessary that all administrative remedies be exhausted.

*Acts 1966, No. 382, §13, eff. July 1, 1967; Acts 1991, No. 639, §1, eff. July 17, 1991; Acts 1997, No. 1043, §1, eff. July 11, 1997.*

**§964. Judicial Review of Adjudication**

A.(1) Except as provided in R.S. 15:1171 through 1177, a person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review under this Chapter whether or not he has applied to the agency for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy and would inflict irreparable injury.

(2) No agency or official thereof, or other person acting on behalf of an agency or official thereof shall be entitled to judicial review under this Chapter.

B. Proceedings for review may be instituted by filing a petition in the district court of the parish in which the agency is located within thirty days after mailing of notice of the final decision by the agency or, if a rehearing is requested, within thirty days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

C. The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay ex parte upon appropriate terms, except as otherwise provided by Title 37 of the Louisiana Revised Statutes of 1950, relative to professions and occupations. The court may require that the stay be granted in accordance with the local rules of the reviewing court pertaining to injunctive relief and the issuance of temporary restraining orders.

D. Within thirty days after the service of the petition, or within further time allowed by the court, the agency shall

transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

E. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

F. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

G. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

(7) In cases covered by R.S. 15:1171 through 1177, manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

*Acts 1966, No. 382, §14, eff. July 1, 1967; Acts 1995, No. 1105, §1, eff. June 29, 1995; Acts 1997, No. 128, §1, eff. June 12, 1997; Acts 1997, No. 1216, §2; Acts 1997, No. 1224, §1; H.C.R. No. 89, 1997 R.S., eff. June 2, 1997; Acts 1999, No. 1332, §1, eff. July 12, 1999.*

**§965. Appeals**

An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal. The appeal shall be taken as in other civil cases.

*Acts 1966, No. 382, §15, eff. July 1, 1967.*

**§965.1. Expenses of Administrative Proceedings; Right to Recover**

A. When a small business files a petition seeking: (1) relief from the application or enforcement of an agency rule or regulation, (2) judicial review of the validity or applicability of an agency rule, (3) judicial review of an adverse declaratory order or ruling, or (4) judicial review of a final decision or order in an adjudication proceeding, the petition may include a claim against the agency for the recovery of reasonable litigation expenses. If the small business prevails and the court determines that the agency acted without substantial justification, the court may award such expenses, in addition to granting any other appropriate relief.

B. A small business shall be deemed to have prevailed in an action when, in the final disposition, its position with respect to the agency rule or declaratory order or ruling is maintained, or when there is no adjudication, stipulation, or acceptance of liability on its part. However, a small business shall not be deemed to have prevailed, if the action was commenced at the instance of, or on the basis of a complaint by, anyone other than an officer, agent, or employee of the agency and was dismissed by the agency on a finding of no cause for the action or settled without a finding of fault on the part of the small business.

C. An agency shall pay any award made against it pursuant to this Section from funds in its regular operating budget and shall, at the time of its submission of its proposed annual budget, submit to the division of administration and to the presiding officer of each house of the legislature a report of all such awards paid during the previous fiscal year.

D. As used in this Section:

(1) "Reasonable litigation expenses" means any expenses, not exceeding seven thousand five hundred dollars in connection with any one claim, reasonably incurred in opposing or contesting the agency action, including costs and expenses incurred in both the administrative proceeding and the judicial proceeding, fees and expenses of expert or other witnesses, and attorney fees.

(2) "Small business" means a small business as defined by the Small Business Administration, which for purposes of size eligibility or other factors, meets the applicable criteria set forth in 13 Code of Federal Regulations, Part 121, as amended.

*Added by Acts 1982, No. 497, §1.*

**§966. Construction and Effect; Judicial Cognizance**

A. Nothing in this Chapter shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Notwithstanding the foregoing, and except as provided in R.S. 49:967, any and all statutory requirements regarding the adoption or promulgation of rules other than those contained in Sections 953, 954, 954.1

and 968 of this Title are hereby superseded by the provisions of this Chapter and are repealed. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this Chapter through the issuance of rules or otherwise.

B. If any provision of this Chapter or the application thereof is held invalid, the remainder of this Chapter or other applications of such provision shall not be affected. No subsequent legislation shall be held to supersede or modify the provisions of this Chapter except to the extent that such legislation shall do so expressly.

C. The courts of this state shall take judicial cognizance of rules promulgated in the State Register under the provisions of this Chapter.

D. Repealed by Acts 1978, No. 252, §3.

*Acts 1966, No. 382, §16, eff. July 1, 1967. Amended by Acts 1979, No. 578, §§1, 2, eff. July 18, 1979.*

**§967. Exemptions from Provisions of Chapter**

A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not be applicable to the Board of Tax Appeals, the Department of Revenue, with the exception of the Louisiana Tax Commission that shall continue to be governed by this Chapter in its entirety, unless otherwise specifically provided by law, and the administrator of the Louisiana Employment Security Law; however, the provisions of R.S. 49:951(2), (4), (5), (6), and (7), 952, 953, 954, 954.1, 968, 969, and 970 shall be applicable to such board, department, and administrator.

B.(1) The provisions of R.S. 49:968(F) and 970 shall not be applicable to any rule promulgated by the State Civil Service Commission or the Public Service Commission.

(2) The provisions of this Chapter shall not be applicable to entities created as provided in Part V of Chapter 6 of Title 34 of the Louisiana Revised Statutes of 1950.

C. The provisions of R.S. 49:963, 964, and 965 shall not be applicable to any rule, regulation, or order of any agency subject to a right of review under the provisions of R.S. 30:12.

D.(1) The provisions of R.S. 49:968 shall not apply to any rule or regulation promulgated by the Department of Wildlife and Fisheries or the Wildlife and Fisheries Commission relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster seasons, finfish seasons and size limits, and all rules and regulations pursuant thereto. The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission may employ the provisions of R.S. 49:953(B) in promulgating rules and regulations relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster seasons, and finfish seasons and size limits, and all rules and regulations pursuant thereto.

(2) Those rules adopted annually pursuant to this Subsection by the Department of Wildlife and Fisheries which open and close the offshore and fall shrimp seasons, the oyster season, the marine finfish seasons, the webless migratory game bird hunting season, and the trapping season shall be effective for a period of time equal to the length of the respective season.

*Acts 1983, No. 409, §2. Acts 1984, No. 244, §1; Acts 1985, No. 869, §1, eff. July 23, 1985; Acts 1986, No. 494, §1; Acts 1990, No. 248, §1; Acts 1992, No. 53, §1; Acts 1997, No. 1172, §9, eff. June 30, 1997; Acts 1997, No. 1484, §1, eff. July 16, 1997.*

**§968. Review of Agency Rules; Fees**

A. It is the declared purpose of this Section to provide a procedure whereby the legislature may review the exercise of rule-making authority and the adoption, increasing, or decreasing of fees, extensions of the legislative lawmaking function, which it has delegated to state agencies.

B. Prior to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee, the agency shall submit a report relative to such proposed rule change or fee adoption, increase, or decrease to the appropriate standing committees of the legislature and the presiding officers of the respective houses as provided in this Section. The report shall be so submitted on the same day the notice of the intended action is submitted to the Louisiana Register for publication in accordance with R.S. 49:953(A)(1). The report shall be submitted to each standing committee at the committee's office in the state capitol by certified mail with return receipt requested or by messenger who shall provide a receipt for signature. The return receipt or the messenger's receipt shall be proof of receipt of the report by the committee.

(1) The Department of Economic Development, all of the agencies made a part of it, and those agencies transferred to or placed within the office of the governor pursuant to R.S. 36:4.1 shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce and Consumer Protection.

(2) Corrections services of the Department of Public Safety and Corrections and all the agencies of the department related to corrections and concealed weapons and concealed weapon permits, except as otherwise provided in this Subsection, the Louisiana State Board of Private Security Examiners, and the gaming enforcement section of the office of state police within the Department of Public Safety and Corrections shall submit all reports other than reports on proposed rule changes affecting prison enterprise programs, to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section C; however, the Crime Victims Reparation Board shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section B.

(3) The Department of Culture, Recreation and Tourism and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Commerce and Consumer Protection.

(a) The office of the state library, the office of the state museum, the State Board of Library Examiners, the Louisiana Archaeological Survey and Antiquities Commission, the Board of Directors of the Louisiana State Museum, the Board of Commissioners of the State Library of Louisiana, the Louisiana State Arts Council, the Louisiana State Capitol Fiftieth Anniversary Commission, and the Louisiana National Register Review Committee shall submit the report to the House Committee on Municipal, Parochial

and Cultural Affairs and the Senate Committee on Education.

(b) The office of state parks and the State Parks and Recreation Commission shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Natural Resources.

(c) The office of tourism and promotion, the Louisiana Tourist Development Commission, and the Mississippi River Road Commission shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce and Consumer Protection.

(4) The Department of State and all of the agencies made a part of it shall submit a report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(5) The Department of Labor and all of the agencies made a part of it shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(6) The Department of Transportation and Development and all of the agencies made a part of it shall submit the report, to the House Committee on Transportation, Highways and Public Works and the Senate Committee on Transportation, Highways and Public Works. The department shall also submit to the standing committees any policies or priorities developed for the expenditure or distribution of any monies from the Transportation Trust Fund as created by Article VII, Section 27 of the Constitution of Louisiana. The policies and priorities shall be submitted for review purposes only.

*NOTE: Paragraph (7) repealed by Acts 2001, No. 451, §5, eff. Jan. 12, 2004, or when a vacancy occurs in the office of commissioner of elections.*

(7) The Department of Elections and Registration and all of the agencies made a part of it shall submit the report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(8) The Department of Justice and all of the agencies made a part of it shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section C.

(9) The Department of Civil Service and all of the agencies made a part of it shall submit the report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(10) The Department of Revenue and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs; however, the office of charitable gaming shall submit the report to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section B.

(11) The Department of Natural Resources and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and the Senate Committee on Natural Resources.

(12) Public Safety Services of the Department of Public Safety and Corrections and all the agencies of the department related to public safety, except as otherwise provided in this Subsection, shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section B; however, the office of motor vehicles shall submit the report to the House Committee on Transportation, Highways and Public Works and the Senate Committee on the Judiciary, Section B.

(13) The Department of Wildlife and Fisheries and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and the Senate Committee on Natural Resources.

(14) The Department of Insurance and all of the agencies made a part of it shall submit the report to the House Committee on Insurance and the Senate Committee on Insurance.

(15)(a) The Department of the Treasury and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(b) Each retirement system made a part of the Department of the Treasury shall submit the report to the House Committee on Retirement and the Senate Committee on Retirement.

(16) The Department of Health and Hospitals and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(17) The Department of Social Services and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(18) The Department of Agriculture and all of the agencies made a part of it shall submit all reports, and the Department of Public Safety and Corrections and all the agencies made a part of it shall submit reports on proposed rule changes affecting prison enterprise programs, to the House Committee on Agriculture and the Senate Committee on Agriculture.

(19) The Department of Education and all of the agencies made a part of it shall submit the report to the House Committee on Education and the Senate Committee on Education.

(20) The Department of Public Service and all of the agencies made a part of it shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce.

(21)(a) Except as provided in Paragraph (1) of this Subsection, the office of the governor and the office of the lieutenant governor and all of the agencies within or part of either and any other agency for which provisions are not otherwise made in this Subsection, shall submit the report to the speaker of the House of Representatives and the president of the Senate, except that executive orders duly issued by the governor and attested to by the secretary of state are exempt from the provisions of this Chapter. The speaker of the House of Representatives and the president of the Senate shall promptly forward the report to the appropriate standing committee of their respective houses.

(b) The Louisiana Workforce Commission shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(c) The Office of Group Benefits shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(22) The Department of Environmental Quality and all of the agencies made a part of it shall submit the report to the House Committee on the Environment and the Senate Committee on Environmental Quality.

(23) The Louisiana Sentencing Commission shall submit the report to the House Committee on the Administration of Criminal Justice and the Senate Committee on the Judiciary, Section C.

(24) In addition to the submission of a report relative to a proposed rule change or fee adoption, increase, or decrease by an agency to the appropriate standing committee as specified in Paragraphs (1) through (23) of this Subsection, whenever the fiscal impact of the rule or fee adoption, increase, or decrease, as indicated by the statement of fiscal impact required by R.S. 49:968(C)(5), exceeds one million dollars, the report on the proposed rule change or fee adoption, increase, or decrease shall also be submitted to the Senate Committee on Finance and the House Committee on Appropriations and shall be subject to review by those committees in the same manner and to the same extent as the review of the standing committees provided for in Paragraphs (1) through (23) of this Subsection.

C. The report, as provided for in Subsection B of this Section, shall contain:

(1) A copy of the rule as it is proposed for adoption, amendment, or repeal and a statement of the amount of the fee to be adopted or the amount of the proposed increase or decrease.

(2) A statement of the proposed action, that is, whether the rule is proposed for adoption, amendment, or repeal; a brief summary of the content of the rule if proposed for adoption or repeal; and a brief summary of the change in the rule if proposed for amendment.

(3) The specific citation of the enabling legislation purporting to authorize the adoption, amending, or repeal of the rule or purporting to authorize the adoption, increasing, or decreasing of the fee.

(4) A statement of the circumstances which require adoption, amending, or repeal of the rule or the adoption, increasing, or decreasing of the fee.

(5) A statement of the fiscal impact of the proposed action and a statement of the economic impact of the proposed action, both approved by the Legislative Fiscal Office.

D.(1)(a) The chairman of each standing committee to which reports are submitted shall appoint an oversight subcommittee, which may conduct hearings on all rules that are proposed for adoption, amendment, or repeal and on all proposed fee adoptions, increases, or decreases. Any such hearing shall be conducted after any hearing is conducted by the agency pursuant to R.S. 49:953(A)(2).

(b) The agency shall submit a report to the subcommittee, in the same manner as the submittal of the report provided for in Subsection B of this Section, which shall include:

(i) A summary of all testimony at any hearing conducted pursuant to R.S. 49:953(A)(2).

(ii) A summary of all comments received by the agency, a copy of the agency's response to the summarized comments, and a statement of any tentative or proposed action of the agency resulting from oral or written comments received.

(iii) A revision of the proposed rule if any changes to the rule have been made since the report provided for in Subsection B of this Section was submitted, or a statement that no changes have been made.

(iv) A concise statement of the principal reasons for and against adoption of any amendments or changes suggested.

(2)(a) Except as provided in Paragraph H(2) of this Section, any subcommittee hearing on a proposed rule shall be held no earlier than five days and no later than thirty days following the day the report required by Subparagraph (1)(b) of this Subsection is received by the subcommittee.

(b) The oversight subcommittee may consist of the entire membership of the standing committee and shall consist of at least a majority of the membership of the standing committee, at the discretion of the chairman of the standing committee, with the concurrence of the speaker of the House of Representatives or the president of the Senate. House and Senate oversight subcommittees may meet jointly or separately to conduct hearings for purposes of rules review.

(3) At such hearings, the oversight subcommittees shall:

(a) Determine whether the rule change or action on fees is in conformity with the intent and scope of the enabling legislation purporting to authorize the adoption thereof.

(b) Determine whether the rule change or action on fees is in conformity and not contrary to all applicable provisions of law and of the constitution.

(c) Determine the advisability or relative merit of the rule change or action on fees.

(d) Determine whether the rule change or action on fees is acceptable or unacceptable to the oversight subcommittee.

E.(1)(a) Each such determination shall be made by the respective subcommittees of each house acting separately. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

(b) No later than three weeks before the deadline for legislative oversight action, the chairman of the subcommittee may request, by letter, the consent of the subcommittee members to have a mail ballot instead of a meeting to consider a proposed rule or proposed fee action. If no objection is received within ten days of the chairman's request, the chairman shall cause a mail ballot to be sent to the members of the subcommittee. In order for the subcommittee to reject a proposed rule or proposed fee action, a majority of ballots returned to the chairman at least twenty-four hours prior to the deadline for legislative oversight action must disapprove the change. Any determination by the subcommittee shall be made within the period provided for oversight hearings in Paragraph D(2) of this Section.

(2) Failure of a subcommittee to conduct a hearing or to make a determination regarding any rule proposed for adoption, amendment, or repeal shall not affect the validity of a rule otherwise adopted in compliance with this Chapter.

F.(1) If either the House or Senate oversight subcommittee determines that a proposed rule change or proposed fee action is unacceptable, the respective subcommittee shall provide a written report which contains the following:

(a) A copy of the proposed rule or a statement of the amount of the proposed fee action.

(b) A summary of the determinations made by the subcommittee in accordance with Subsections D and E of this Section.

(2) The written report shall be delivered to the governor, the agency proposing the rule change, and the Louisiana Register no later than four days after the committee makes its determination.

G. After receipt of the report of the subcommittee, the governor shall have ten calendar days in which to disapprove the action taken by the subcommittee. If the action of the subcommittee is not disapproved by the governor within ten calendar days from the day the subcommittee report is delivered to him, the rule change shall not be adopted by the agency until it has been changed or modified and subsequently found acceptable by the subcommittee, or has been approved by the standing committee, or by the legislature by concurrent resolution. If a proposed rule change is determined to be unacceptable by an oversight committee and such determination is not disapproved by the governor as provided in this Section, the agency shall not propose a rule change or emergency rule that is the same or substantially similar to such disapproved proposed rule change nor shall the agency adopt an emergency rule that is the same or substantially similar to such disapproved proposed rule change within four months after issuance of a written report by the subcommittee as provided in Subsection F of this Section nor more than once during the interim between regular sessions of the legislature.

H.(1) If both the House and Senate oversight subcommittees fail to find a proposed rule change unacceptable as provided herein, or if the governor disapproves the action of an oversight subcommittee within the time provided in R.S. 49:968(G), the proposed rule change may be adopted by the agency in the identical form proposed by the agency or with technical changes or with changes suggested by the subcommittee, provided at least ninety days and no more than twelve months have elapsed since notice of intent was published in the State Register.

(2) Substantive changes to a rule proposed for adoption, amendment, or repeal occur if the nature of the proposed rule is altered or if such changes affect additional or different substantive matters or issues not included in the notice required by R.S. 49:953(A)(1). Whenever an agency seeks to substantively change a proposed rule after notice of intent has been published in the Louisiana Register pursuant to R.S. 49:953(A)(1), the agency shall hold a public hearing on the substantive changes preceded by an announcement of the hearing in the Louisiana Register. A notice of the hearing shall be mailed within ten days after the date the announcement is submitted to the Louisiana Register to all persons who have made request of the agency for such notice. Any hearing by the agency pursuant to this Paragraph shall be held no earlier than thirty days after the publication of the announcement in the Louisiana Register. The agency hearing shall conform to R.S. 49:953(A)(2)(b), and a report on the hearing shall be made to the oversight committees in accordance with Subparagraph D(1)(b) of this Section. The agency shall make available to interested persons a copy of such report no later than one working day following the submittal of such report to the oversight committees. Any determination as to the rule by the oversight committees, prior to gubernatorial review as provided in Subsection G of this Section, shall be made no earlier than five days and no later than thirty days following the day the report required by this Paragraph is received from the agency.

(3) If a rule or part of a rule that is severable from a larger rule or body of rules proposed as a unit is found unacceptable, the rules or parts thereof found acceptable may be adopted by the agency in accordance with Paragraph (1) of this Subsection.

I. If the governor disapproves the action of an oversight subcommittee, he shall state written reasons for his action and shall deliver a copy of his reasons to the House and Senate oversight subcommittees, the agency proposing the rule change, and the State Register.

J. The State Register shall publish a copy of the written report of an oversight subcommittee and the written report of the governor in disapproving any such action, or if unduly cumbersome, expensive, or otherwise inexpedient, a notice stating the general subject matter of the omitted report and stating how a copy thereof may be obtained.

K. Each year, thirty days prior to the beginning of the regular session of the legislature, each agency which has proposed the adoption, amendment, or repeal of any rule or the adoption, increase, or decrease of any fee during the previous year, shall submit a report to the appropriate committees as provided for in Subsection B of this Section. This report shall contain a statement of the action taken by the agency with respect to adoption, amendment, or repeal of each rule proposed for adoption, amendment, or repeal and a report of the action taken by the agency with respect to any proposed fee adoption, increase, or decrease.

L. After submission of the report to the standing committee, a public hearing may be held by the committee for the purpose of reviewing the report with representatives of the proposing agency.

M. No later than the second legislative day of the regular session of the legislature, a standing committee to which proposed rule changes or proposed fee changes are submitted may submit a report to the legislature. This report shall contain a summary of all action taken by the committee or the oversight subcommittee with respect to agency rules and fees during the preceding twelve months. The report shall also contain any recommendations of the committee for statutory changes concerning the agency, particularly in statutes authorizing the making and promulgation of rules and fees of the agency.

N. A standing committee may, at any time, exercise the powers granted to an oversight subcommittee under the provisions of this Section.

*Acts 1990, No. 312, §1; Acts 1990, No. 938, §1; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 1991, No. 21, §2, eff. June 14, 1991; Acts 1991, No. 938, §5; Acts 1992, No. 377, §4, eff. June 17, 1992; Acts 1992, No. 447, §3, eff. June 20, 1992; Acts 1993, No. 119, §1; Acts 1993, No. 733, §1; Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and*

*Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, §3, eff. May 7, 1996; Acts 1997, No. 1, §5, eff. April 30, 1997; Acts 1997, No. 1001, §1; Acts 1999, No. 568, §2, eff. June 30, 1999; Acts 2001, No. 8, §16, eff. July 1, 2001; Acts 2001, No. 9, §8, eff. July 1, 2001; Acts 2001, No. 300, §3; Acts 2001, No. 451, §5, eff. Jan. 12, 2004; Acts 2001, No. 1178, §7, eff. June 29, 2001.*

*NOTE: See Acts 1999, No. 568, §§5 and 7.*

*NOTE: See Acts 2001, No. 300, §5.*

*NOTE: See Acts 2001, No. 451, '8(A) relative to effective date.*

**§969. Legislative Veto, Amendment, or Suspension of Rules, Regulations, and Fees**

In addition to the procedures provided in R.S. 49:968 for review of the exercise of the rulemaking authority delegated by the legislature to state agencies, as defined by this Chapter, 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. The Louisiana Register shall publish a brief summary of any Concurrent Resolution adopted by the legislature pursuant to this Section. Such summary shall be published not later than forty-five days after signing of such Resolution by the presiding officers of the legislature.

*Added by Acts 1980, No. 660, §1. Acts 1995, No. 1109, §1, eff. Oct. 1, 1995.*

**§970. Gubernatorial Suspension or Veto of Rules and Regulations**

The governor, by executive order, may suspend or veto any rule or regulation or body of rules or regulations adopted by a state department, agency, board or commission, except as provided in R.S. 49:967, within thirty days of their adoption. Upon the execution of such an order, the governor shall transmit copies thereof to the speaker of the House of Representatives and president of the Senate.

*Added by Acts 1981, No. 453, §1.*

**§971. Rejection of Agency Fee Adoption, Increases, or Decreases; Prohibition against Fee Increases and New Fees; Exceptions**

A.(1) If either the House or Senate oversight subcommittees appointed pursuant to R.S. 49:968 determines that a proposed fee adoption, increase, or decrease is unacceptable, the respective subcommittee shall provide a written report containing the reasons therefor to the governor, the agency proposing the fee adoption, increase, or decrease, and the other house of the legislature. If the oversight subcommittee of the other house of the legislature likewise determines that the proposed fee adoption, increase, or decrease is unacceptable the fee action shall not be adopted by the agency.

(2) If a proposed fee adoption, increase, or decrease is found unacceptable as provided in this Section, the agency shall not propose a fee or a fee change or an emergency fee or an emergency fee change that is the same or substantially similar to the disapproved fee action nor shall the agency adopt an emergency fee or fee change that is the same or substantially similar to the disapproved fee action within four months after issuance of the subcommittee report nor more than once during the interim between regular sessions of the legislature.

(3) However, no state agency which has the authority to impose or assess fees shall increase any existing fee or impose any new fee unless the fee increase or fee adoption is expressly authorized pursuant to a fee schedule established by statute or specifically authorized by a federal law, rules, or regulations for the purpose of satisfying an express mandate of such federal law, rule, or regulation. No state agency shall adjust, modify or change the formula for any authorized fee in a manner that would increase the fee paid by any person by more than five percent of the relevant fee paid by such person in the previous fiscal year. Proposed fee increases of less than five percent shall be subject to oversight as required by R.S. 49:968.

(4)(a) The provisions of Paragraph (3) of this Subsection shall not apply to any department which is constitutionally created and headed by an officer who is duly elected by a majority vote of the electorate of the state.

(b) The provisions of Paragraph (3) of this Subsection shall not apply to any state professional and occupational licensing boards.

B. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

*Acts 1987, No. 240, §1; Acts 1995, No. 1005, §1, eff. Aug. 15, 1995; Acts 1995, No. 1057, §1, eff. June 29, 1995, and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and Hospitals only).*

**§972. Family Impact Statement; Issues to be Considered; Procedure; Penalty**

A. Prior to the adoption and implementation of rules, each state agency shall consider and state in writing the impact of such rules on family formation, stability, and autonomy. This written consideration shall be known as the "family impact statement."

B. The family impact statement will consider and respond in writing to the following regarding the proposed rule:

(1) The effect on the stability of the family.

(2) The effect on the authority and rights of parents regarding the education and supervision of their children.

(3) The effect on the functioning of the family.

(4) The effect on family earnings and family budget.

(5) The effect on the behavior and personal responsibility of children.

(6) The ability of the family or a local government to perform the function as contained in the proposed rule.

C. All family impact statements must be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of law relating to public records.

D. For the purposes of this Section, "family" shall mean a group of individuals related by blood, marriage, or adoption who live together as a single household.

*Acts 1999, No. 1183, §1.*

**Chapter 13-A. Revision of Louisiana's Administrative Code**

**§981. Continuous Revision under Supervision of Division of Administration, Office of the State Register**

The office of the state register, as the official entity to receive, compute, index, and publish the Louisiana Register and Louisiana Administrative Code, shall direct and

supervise the continuous revision, clarification, and coordination of the Louisiana Register and Louisiana Administrative Code in a manner not inconsistent with the provisions of this Chapter.

*Acts 1993, No. 379, §1.*

**§982. New Regulation; Incorporation in Louisiana Register and Louisiana Administrative Code; Resolution of Conflicting Rules**

A. Upon receipt of any rules promulgated under the Administrative Procedure Act, the office of the state register shall prepare the "Louisiana Register," containing the rules to be promulgated in the Louisiana Administrative Code as they may have been amended or repromulgated and omitting therefrom those sections that have been repealed. There shall also be incorporated therein, in an appropriate place and classification, the text of all the new rules of a general and public nature, assigning to these rules an appropriate title, part, chapter, and section number, and indicating the statutory authority of the rules from which they are taken.

B. When a conflict between two or more rules affecting the same subject matter in the same provision or regulation cannot be resolved for the purpose of incorporating the text into the Louisiana Administrative Code, the office of the state register shall so notify the secretary of the department or administrative officer charged with the promulgation of the rule prior to preparing the Louisiana Administrative Code. The secretary or administrative officer shall be notified of the proposed correction. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed correction is received by the office of the state register within seven days after the secretary or administrative officer receives the notice, the office of the state register shall then direct the printer to incorporate into the Louisiana Administrative Code the text of the provision of the rule properly promulgated.

*Acts 1993, No. 379, §1.*

**§983. Incorporation of Current Rules and Regulations Procedure**

A. In preparing the Louisiana Register or the Louisiana Administrative Code as provided for in R.S. 49:981, the office of the state register shall not alter the sense, meaning, or effect of any rule properly promulgated under the Administrative Procedure Act, but it may:

(1) Renumber and rearrange sections or parts of sections.

(2) Transfer sections or divide sections so as to give to distinct subject matters a separate section number, but without changing the meaning.

(3) Insert or change the wording of headnotes.

(4) Change reference numbers to agree with renumbered parts, chapters, or sections.

(5) Substitute the proper section, chapter, or part number for the terms "this part," "the preceding section," and the like.

(6) Strike out figures where they are merely a repetition of written words and vice-versa.

(7) Change capitalization for the purpose of uniformity.

(8) Correct manifest typographical and grammatical errors.

(9) Make any other purely formal or clerical changes in keeping with the purpose of the revision.

B. The office of the state register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed revision is received by the office of the state register within seven days after the secretary or administrative officer receives the notice, the office of the state register shall proceed with the revision.

*Acts 1993, No. 379, §1.*

**§984. Alphabetical or Numerical Sequence of Laws**

A. Whenever a rule defines terms, enumerates provisions or items, or otherwise sets forth provisions of a rule in a numerical or alphabetical listing or sequence, and such provision, as promulgated, fails to establish or fails to maintain an existing alphabetical or numerical sequence, the office of the state register, in preparing the Louisiana Register and the Louisiana Administrative Code as provided for by R.S. 49:983, shall rearrange and renumber or redesignate the provisions to the extent necessary to place all of them in consistent order.

B. The office of the state register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, is received by the office of the state register within seven days after the secretary or administrative officer receives the notice, the office of the state register shall proceed with the revision.

C. This requirement is in addition to any other authority granted to the office of the state register in the preparation of the Louisiana Register or the Louisiana Administrative Code, particularly by R.S. 49:983.

*Acts 1993, No. 379, §1.*

**§985. Submitting Copy to the Proper Party**

A draft of the Louisiana Administrative Code prepared by the office of the state register shall be submitted to the appropriate secretary or administrative officer charged with the promulgation of any rule prior to transmittal to the printer.

*Acts 1993, No. 379, §1.*

**§986. Filing of Copy with Commissioner of Administration; Certificate of Correctness; Printing**

Any edition of the Louisiana Administrative Code, or of any supplement thereto, prepared in the manner provided in R.S. 49:982 and 983, shall be certified by the office of the state register that each section therein has been compared with the original sections in the official copy of the Louisiana Register with the final provisions of the promulgated rules from which the sections were derived, and that with the exception of the changes of form permitted in R.S. 49:983, the sections are correct. The office of the state register shall order the printing of an edition sufficient in number to supply the demand. When the edition has been printed, the office of the state register shall affix to one copy of the printed edition the office of the state register's original certificate and file the same for record in his office. All other copies of the same edition may contain a printed facsimile of the office's certificate.

*Acts 1993, No. 379, §1.*

**§987. Printing and Publication of Louisiana Register; Proof of Certified Edition**

The office of the state register may enter into contracts with private publishers for the printing, publication, sale, and distribution of any edition of the Louisiana Register and the Louisiana Administrative Code prepared by the office of the state register and certified by it pursuant to the provisions of this Chapter. Those editions so authorized by the office of the state register and containing the printed facsimile of the office of the state register's certificate of correctness shall be admissible as prima facie evidence of the rules contained therein.

*Acts 1993, No. 379, §1.*

## Chapter 13-B. Division of Administrative Law

### Part A. Administrative Law

**§991. Creation of Division of Administrative Law**

The division of administrative law, hereafter referred to as "division," is created in the Department of State Civil Service.

*Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1162, §2, eff. July 1, 1998.*

*NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.*

**§992. Applicability; Exemptions**

A.(1) Prior to October 1, 1996, the provisions of the Administrative Procedure Act shall apply to all adjudications as defined by that Act.

(2) On and after October 1, 1996, the division shall commence and handle all adjudications in the manner required by the Administrative Procedure Act provided that the provisions of that Act are not inconsistent with the provisions of this Chapter.

B.(1) Notwithstanding any other provision of the law to the contrary except as provided by R.S. 49:967 and the provisions of this Section, all adjudications shall be resolved exclusively as required by the provision of this Chapter and the Administrative Procedure Act.

(2) In an adjudication commenced by the division, the administrative law judge shall issue the final decision or order, whether or not on rehearing, and the agency shall have no authority to override such decision or order.

(3) Nothing in this Section shall affect the right to or manner of judicial appeal in any adjudication, irrespective of whether or not such adjudication is commenced by the division or by an agency. However, no agency or official thereof, or other person acting on behalf of an agency or official thereof, shall be entitled to judicial review of a decision made pursuant to this Chapter.

C. The positions appointed by the director pursuant to this Chapter shall be in the classified service.

D.(1) Except as provided in Paragraphs (2) through (8) of this Subsection, the provisions of this Chapter shall apply to any board, commission, department, or agency of the executive branch of state government.

(2) Any board, commission, department, or agency which is required, pursuant to a federal mandate and as a condition of federal funding, to conduct or to render a final order in an adjudication proceeding shall be exempt from the provisions of this Chapter to the extent of the federal mandate.

(3) The office of workers' compensation administration in the Department of Labor shall be exempt from the provisions of this Chapter.

(4) The office of regulatory services in the Department of Labor shall be exempt from this Chapter.

(5) State professional and occupational licensing boards shall be exempt from the provisions of this Chapter.

(6) The Department of Agriculture shall be exempt from the provisions of this Chapter.

(7) All adjudications by the assistant secretary of the office of conservation pursuant to Chapter 1 and 7 of Subtitle 1 of Title 30 of the Louisiana Revised Statutes, except determinations of violations of laws, rules, regulations and orders, and determinations of penalties for such violations, shall be exempt from the provisions of this Chapter.

(8) The Public Service Commission and any entity which by law has its adjudications handled by the Public Service Commission shall be exempt from the provisions of this Chapter.

E. In the event that a person files a civil action to require that a state department, division, office, agency, board, commission, or other entity of state government conduct an adjudication as required by this Chapter and judgment is rendered in his favor, he shall be entitled to an award of reasonable attorney fees to be taxed as costs in the matter.

F. The provisions of this Chapter shall apply to all adjudications as defined in the Administrative Procedure Act pursuant to the Procurement Code.

G. Any board or commission authorized by law to conduct hearings may continue to hold such hearings.

*Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1172, §9, eff. June 30, 1997; Acts 1997, No. 1484, §1, eff. July 16, 1997; Acts 1999, No. 1332, §1, eff. July 12, 1999; Acts 2001, No. 527, §1.*

*NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.*

*NOTE: See Acts 1999, No. 1332, §2 relative to the remedial nature of Act.*

**§993. Definitions; Rules**

A. The definitions for terms as provided by R.S. 49:951 shall apply to such terms used in this Chapter.

B. The division may promulgate rules according to the Administrative Procedure Act to insure compliance with the provisions of this Chapter.

*Acts 1995, No. 739, §2, eff. Oct. 1, 1996.*

*NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.*

**§994. Administrative Law Judges**

A. The director of the division shall employ the administrative law judges for the division, each of whom shall have the following qualifications:

(1) An administrative law judge shall be a resident of Louisiana.

(2) An administrative law judge shall be licensed to practice law in Louisiana.

(3) An administrative law judge shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B. An administrative law judge shall be an employee of the division.

C. Notwithstanding the provisions of this Section, all persons employed in affected agencies on October 1, 1996, who handle adjudications and whether or not they meet the qualifications of this Chapter shall, unless the person declines, be transferred to and employed in the division created by this Chapter to handle adjudications in the

manner provided in this Chapter. However, no person other than those provided for in this Subsection shall be employed as an administrative law judge who does not meet the requirements of this Section.

D. The administrative law judge shall have the authority to:

(1) Regulate the adjudicatory proceedings assigned to him.

(2) Issue such decisions and orders as are necessary to promote a fair, orderly, and prompt adjudication.

(3) Exercise those powers vested in the presiding officer in the Administrative Procedure Act.

(4) If the parties do not object, conduct adjudications or conferences in person or by telephone, video conference, or similar communication equipment, and administer oaths in such proceedings.

(5) Continue an adjudication in any case when a party or subpoenaed necessary witness has been called to service in the uniformed services as defined in R.S. 29:403(9), including but not limited to a proceeding pursuant to R.S. 32:667.

*Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2001, No. 84, §1; Acts 2001, 2nd Ex. Sess., No. 7, §2, eff. Oct. 16, 2001.*

*NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.*

**§995. Director**

A. The governor shall appoint, and the Senate shall confirm, a director for the division, who shall have the following qualifications:

(1) The director shall be a resident of Louisiana.

(2) The director shall be licensed to practice law in Louisiana.

(3) The director shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B.(1) The director shall serve a six-year term and may be reappointed and confirmed for subsequent six-year terms without limitation.

(2) If a vacancy occurs during the director's term, the governor shall appoint a successor to fill the remainder of the vacant term.

(3) The first director shall be appointed on July 1, 1996, and shall take such action in compliance with this Chapter as necessary to ensure that the provisions of this Chapter are implemented by October 1, 1996.

C. The director shall be a full-time unclassified employee of the division and he shall not accept or engage in additional employment of any kind.

*Acts 1995, No. 739, §2, eff. Oct. 1, 1996.*

*NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.*

**§996. Duties of the Director**

The director of the division shall take the following actions:

(1) Administer and cause the work of the division to be performed in such a manner and pursuant to such a program as may be appropriate.

(2) Organize the division into such sections as may be appropriate.

(3) Assign administrative law judges as appropriate to perform duties vested in or required by the division.

(4) Develop and maintain a program for the continual training and education of administrative law judges and agencies in regard to their responsibilities under this Chapter and the Administrative Procedure Act.

(5) Secure, compile, and maintain all records of adjudications held pursuant to this Chapter or the Administrative Procedure Act, and such reference materials and supporting information as may be appropriate.

(6) Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether or not a summary or ordinary hearing should be held, to regulate the conduct of adjudications.

(7) Promulgate and enforce rules for the prompt implementation and coordinated administration of this Chapter as may be appropriate.

(8) Administer and supervise the conduct of adjudications.

(9) Assist agencies in the preparation, consideration, publication, and interpretation of rules as appropriate pursuant to the Administrative Procedure Act.

(10) Access information concerning the several agencies to assure that they properly promulgate rules required by law.

(11) Employ the services of the several agencies and their employees in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency.

*Acts 1995, No. 739, §2, eff. Oct. 1, 1996.*

*NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.*

**§997. Program of Judicial Evaluation**

A. The director shall develop and implement a program of judicial evaluation to aid in the performance of his duties.

B. The judicial evaluation shall focus on three areas of judicial performance including competence, productivity, and demeanor. It shall include consideration of the following:

(1) Industry and promptness in adhering to schedules.

(2) Tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses, and counsel and in presiding over adjudications.

(3) Legal skills and knowledge of the law and new legal developments.

(4) Analytical talents and writing abilities.

(5) Settlement skills.

(6) Quantity, nature, and quality of caseload disposition.

(7) Impartiality and conscientiousness.

C. The director shall develop standards and procedures for the judicial evaluation which shall include taking comments from randomly selected litigants and lawyers who have appeared before the administrative law judge under evaluation.

D. The judicial evaluation shall include a review of the methods used by the administrative law judge. The judicial evaluation shall not include a review of any result as determined by an administrative law judge in any adjudication.

E. Before implementing any action based on the findings of the judicial evaluation, the director shall discuss the findings and the proposed action with the affected judge.

F. The judicial evaluation and supporting documents shall be confidential and shall not be subject to open records provisions of R.S. 44:1 et seq.

*Acts 1995, No. 739, §2, eff. Oct. 1, 1996.*

*NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.*

**§998. Prehearing Conference**

A. The administrative law judge may conduct a prehearing conference pursuant to a motion of any party or on his own motion.

B. The administrative law judge shall set the time and place for the prehearing conference.

C. The administrative law judge shall give reasonable notice of the prehearing conference to all parties.

D. The prehearing conference may be conducted for the purpose of dealing with one or more of the following matters:

(1) Exploration of settlement possibilities.

(2) Preparation of stipulations.

(3) Clarification of issues.

(4) Rulings on the identities and limitation on the number of witnesses.

(5) Objections to proffers of evidence.

(6) Order of presentation of evidence and cross-examination.

(7) Rulings regarding issuance of subpoenas and protective orders.

(8) Schedules for the submission of written briefs.

(9) Schedules for the conduct of a hearing.

(10) Any other matter to promote the orderly and prompt conduct of the adjudication.

E. The administrative law judge shall issue a prehearing order, which he may direct one or more of the parties to prepare, incorporating the matters determined at the prehearing conference.

F. An administrative law judge assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

*Acts 1995, No. 739, §2, eff. Oct. 1, 1996.*

*NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.*

**§999. Disqualification and Withdrawal of Administrative Law Judge**

A. An administrative law judge shall voluntarily disqualify himself and withdraw from any adjudication in which he cannot accord a fair and impartial hearing or consideration, or when required to by applicable rules governing the practice of law in Louisiana.

B.(1) Any party may request the disqualification of an administrative law judge by filing an affidavit, promptly upon learning of the basis for the disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.

(2) The director shall promptly determine whether or not to disqualify an administrative law judge based on the request, or alternatively, he may hold a preliminary hearing at least ten calendar days prior to the hearing date for the purpose of receiving evidence relating to the grounds alleged for disqualification.

*Acts 1995, No. 739, §2, eff. Oct. 1, 1996.*

*NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.*

**§999.1. Contract for Adjudication Services; Other Governmental Entities**

The division is authorized to provide administrative law judges on a contractual basis to any governmental entity not covered by this Chapter, and to conduct administrative hearings for such entity.

*Acts 1999, No. 416, §1.*

**Part B. Suspension and Revocation of License or Permit for Felonious Activity**

**§999.21. Suspension and Ultimate Revocation of License or Permit; Felony Conviction**

A. As used in this Part, the following terms shall have the following definitions:

(1) "Enforcing authority" means any of the following who have authority to enforce the provisions of this Part:

(a) The issuing agency which issued the license or permit.

(b) The attorney general.

(2) "Holder of a license or permit" means the natural person or other entity in whose name a license or permit is issued and who holds such license or permit.

(3) "Issuing agency" means a state agency, board, commission, department, or other entity of the state which issues a license or permit.

(4) "License or permit" means any license or permit issued to any person or other entity by a state agency, except for any license or permit issued pursuant to any provisions of the law in Title 37 or Title 3 of the Louisiana Revised Statutes of 1950.

B. Notwithstanding any other provision of law to the contrary, and in addition to any other sanction or penalty which may be imposed, any license or permit issued by any issuing agency may be suspended and ultimately revoked in accordance with the procedures provided for in this Part if the natural person who is the holder of such permit or license, the natural person who owns in excess of fifty percent of an entity which holds the license or permit, or the natural person who is the chief executive officer of an entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, any crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

C. The license or permit may be suspended and its revocation shall be recommended to the courts by the issuing agency which has issued the license or permit upon its determination in the manner provided for in this Part that a person provided for in this Section has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit.

D. Such license or permit shall be revoked upon a final judgment by a court that the action of the issuing agency in suspending the license was in accord with the facts and law.

*Acts 1997, No. 1162, §1, eff. July 1, 1998.*

**§999.22. Enforcing Authority; Initiation of Action**

A. Any enforcing authority may bring an action against the holder of a license or permit to suspend and ultimately revoke such license or permit in the manner and according to

the procedure provided for in this Part if the enforcing authority obtains knowledge that the natural person who is the holder of the permit or license, or the natural person who owns in excess of fifty percent of the entity which holds the license or permit, or the natural person who is the chief executive officer of the entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

B. The enforcing authority may initiate the action by providing written notice by certified mail of its intention to suspend and ultimately revoke the license or permit of the holder pursuant to this Part, sent to the holder of the license or permit, the person alleged to have been convicted of, or to have entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit, and to the issuing agency which issued the license or permit, if different from the enforcing authority.

*Acts 1997, No. 1162, §1, eff. July 1, 1998.*

**§999.23.Hearing before the Issuing Agency**

A. An action to enforce the provisions of this Part shall be initiated by written application made by the enforcing authority to the issuing agency issuing the license or permit requesting such agency to order the suspension and recommend to the courts the revocation of the license or permit.

B. No determination shall be made and no license shall be ordered suspended and ultimately revoked without an adjudicatory hearing conducted in accordance with the Administrative Procedure Act and Part A of this Chapter.

C. Notwithstanding the provisions of R.S. 49:992 or any other law to the contrary, any hearing conducted pursuant to this Part may, at the request of the issuing agency, be conducted by an administrative law judge in an adjudicatory hearing pursuant to Part A of this Chapter.

D. For purposes of this Part, the enforcing authority shall prove by a preponderance of the evidence that a person has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to the obtaining or keeping of the license at issue.

*Acts 1997, No. 1162, §1, eff. July 1, 1998.*

**§999.24.Revocation**

A.(1) Within thirty days after the issuance of a written determination and order by an administrative law judge or an issuing agency that the license or permit of a holder should be suspended, and a recommendation to the courts that such license or permit should be revoked, the enforcing authority shall file a petition in the Nineteenth Judicial District Court requesting such judge or court to uphold the determination of such issuing agency and order the revocation of the license or permit.

A copy of the written determination and order of the administrative law judge or the issuing agency and a certified transcript of all proceedings had, if any, shall be filed with the court at the same time as the petition of the enforcing authority.(2) The holder of the license or permit that has been ordered suspended may also file a petition requesting that the order of the administrative law judge or the issuing agency be set aside at any time after it is issued.

B.(1) After or in conjunction with the filing of a petition as provided for in Subsection A of this Section, the holder of the license or permit that has been ordered suspended may file an application with the court with supporting affidavits requesting the court to make an initial determination as to whether the suspension of the license or permit by the administrative law judge or the issuing agency should be upheld.

(2) The court shall assign a hearing on the application for the initial determination not less than two nor more than ten days after the filing of such application, in open court or in chambers.

(3) The court shall review the written determination and order of the administrative law judge or issuing agency, any affidavits which were filed with the application, and the transcript of the proceedings, if any.

(4) If the court upon a review of such documents and consideration of the issues involved finds both that it is not probable that the order of the administrative law judge or the issuing agency will be upheld and that the suspension of the license or permit will result in irreparable injury, loss, or damage to the holder of the license or permit, the court shall issue an order enjoining the suspension until it renders a final judgment on the matter.

C.(1) Except for the procedure as provided in Subsection B of this Section, all of the cases provided for in this Section shall be tried in the same manner as civil cases and shall be heard and determined as speedily as possible.

(2) If the court finds that the action of the administrative law judge or the issuing agency is in accordance with the facts and law, the court shall render a judgment upholding the order of the administrative law judge or the issuing agency and revoking the license or permit of the holder. If not, the court shall either dismiss the order of the administrative law judge or the issuing agency and enjoin the suspension of the license or permit, or it shall remand the case to the administrative law judge or the issuing agency for further proceedings either with or without maintaining the suspension of the license or permit.

*Acts 1997, No. 1162, §1, eff. July 1, 1998.*

**§999.25.Additional Ground or Cause**

Notwithstanding any other law to the contrary, the provisions of this Part shall provide an additional ground or cause of action for suspension or revocation of a license or permit issued by an issuing agency and shall be in addition to any other sanction or penalty which such agency is specifically authorized to impose.

*Acts 1997, No. 1162, §1, eff. July 1, 1998.*

## TIMETABLE FOR ADOPTION OF RULES, FEES, EMERGENCY RULES AND EMERGENCY FEES BY LOUISIANA STATE AGENCIES

| DAY | TIME REQUIREMENT | ACTION |
|---|---|---|
| Agency Rule and Fee Proposal<br>10 days prior to Day 1 | 10 days prior to publication date of State Register in which notice of rulemaking or fee setting intent is published (always 10th day of month) (R.S. 49:951(7), 953(A)(1)(b)(i) and 968(B)). | Last day for agency to submit notice of intent of rulemaking or feesetting to State Register and legislative committee and presiding officers. |
| Day 1 | State Register publication date (always the 20th day of month) | Notice of intent is published. By this date, also must submit notice to interested persons who have requested notice. |
| Day 36-41 | Agency hearing, if requested, no earlier than 35 days and no later than 40 days after notice publication (R.S. 49:953(A)(2)). | The agency must conduct a hearing on the proposed rule or fee, if requested as specified in the law, and must provide for written comments. |
| * * * | Prior to legislative oversight, agency report to legislative committees (R.S. 49:968(D)).<br>*"A Summary Report"* | A report of the hearing, summary of comments received, and of any proposed revision must be provided to the legislative committee, with an explanation of agency action on changes suggested. |
| Legislative Oversight of Rules and Fees<br>Day 1 | Delivery of agency report to legislative committee (R.S. 49:968(D))<br>*"A Summary Report"* | When the agency has completed its report and is ready for oversight, the report is submitted to the legislative committees. This starts the time-table for legislative oversight hearings. |
| Day 6-31 | Legislative hearing no earlier than 5 days and no later than 30 days after agency report of hearing, comments, and/or revision (R.S. 49:968(D)(2) and 953(A)(2)(b)(ii)). | The legislative committees having jurisdiction may conduct a hearing to review and determine if the rule change or fee action is acceptable or unacceptable. |
| 4th day after determination | Committee report to the governor, the agency, and the State Register not later than 4th day after committee determination, if the rule or fee is found unacceptable (R.S. 49:968(F)). | If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register summarizing its determination. |
| 10th day after receipt by governor | The governor has 10 days after receipt of committee report to disapprove committee action (R.S. 49:968(G)). | The governor may disapprove committee action. If he does not disapprove committee action the agency may not adopt rule unless modified and approved by committee. If he does disapprove committee action, the agency may adopt rule. |
| Legislative and Gubernatorial Oversight for Emergency Rules and Emergency Fees<br>Day 1 | Adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)). | Adoption of emergency rule or emergency fee begins time period for review by oversight subcommittee or by governor. |
| Day 2-61 | Oversight subcommittee hearing or gubernatorial review within 60 days of adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)). | Oversight subcommittee may conduct a hearing or governor may review to determine if such rule or fee meets criteria as emergency and determinations as provided in R.S. 49:968(D)(3). |
| 4th Day after determination | Committee report to the governor, the agency, and the State Register and gubernatorial report to the agency and State Register not later than 4th day after committee or gubernatorial determination, if the rule is found unacceptable (R.S. 49:953(B)(4)(a) and (b) and 968(F)). | If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register or the governor must submit a report to the agency and State Register summarizing their determination. Upon agency receipt of report from committee or governor, rule is null and ineffective. |
| Adoption and Effectiveness Rules and Fees<br>90 days after publication | First day agency may adopt rule or fee is 90 days after publication of notice in State Register and after compliance with rulemaking and oversight requirements (Last day for adoption is 12 months after notice publication) (R.S. 49:953(A)(1) and 968(H)). | Agency may adopt rule if the legislative committees of both houses fail to find the rule unacceptable or, if found unacceptable by a legislative committee of either house, if the governor disapproves committee action. Otherwise, it may not adopt the rule unless changed and approved by the committee.<br>Agency may adopt fee if a legislative committee of one house fails to find the fee unacceptable. The governor has no authority to disapprove. |
| * * * | Effective date of adopted rule or fee is date of State Register publication of such rule or fee, unless rule or law provides later date | Final rules or fees are effective after adoption by the agency and upon publication in the State Register, unless a later date is provided in the rule, fee, or by law. |

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| Emergency Rules and Emergency Fees<br>Adoption or 60 days from adoption | Emergency rule or emergency fee is effective on date of adoption, or date specified by agency not more than 60 days from adoption provided written notice is given within 5 days of adoption to governor, attorney general, speaker, president, and Department of State Register (R.S. 49:951(7) and 954(B)(2)). | Agency may adopt emergency rule or emergency fee if emergency criteria are met. Emergency rule may be invalidated by declaratory judgment that it does not meet emergency criteria. (R.S. 49:953(B)(3)) Emergency rule is null upon agency receipt of report from oversight committee or governor that the rule is unacceptable. (R.S. 49:953(B)(4)) |
| * * * | Not effective beyond publication date of State Register published in month following the month adopted, unless such rule or fee and the reasons for adoption are published (however, not effective for longer than 120 days) (R.S. 49:954(B)(2)). | Agency must publish emergency rule or emergency fee and the reasons for adoption in the State Register published the month after the month of adoption to continue effectiveness, provided not effective longer than 120 days. |
| Agency Rule and Fee Proposal<br><br>10 days prior to Day 1 | 10 days prior to publication date of State Register in which notice of rulemaking or fee setting intent is published (always 10th day of month) (R.S. 49:951(7), 953(A)(1)(b)(i) and 968(B)). | Last day for agency to submit notice of intent of rulemaking or fee setting to State Register and legislative committee and presiding officers. |
| Day 1 | State Register publication date (always the 20th day of month) | Notice of intent is published. By this date, also must submit notice to interested persons who have requested notice. |
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| Day 2-61 | Oversight subcommittee hearing or gubernatorial review within 60 days of adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)). | Oversight subcommittee may conduct a hearing or governor may review to determine if such rule or fee meets criteria as emergency and determinations as provided in R.S. 49:968(D)(3). |
| 4th Day after determination | Committee report to the governor, the agency, and the State Register and gubernatorial report to the agency and State Register not later than 4th day after committee or gubernatorial determination, if the rule is found unacceptable (R.S. 49:953(B)(4)(a) and (b) and 968(F)). | If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register or the governor must submit a report to the agency and State Register summarizing their determination. Upon agency receipt of report from committee or governor, rule is null and ineffective. |

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|---|---|---|
| Adoption and Effectiveness<br><br>*Rules and Fees*<br><br>90 days after publicat ion | First day agency may adopt rule or fee is 90 days after publication of notice in State Register and after compliance with rulemaking and oversight requirements (Last day for adoption is 12 months after notice publication) (R.S. 49:953(A)(1) and 968(H)). | Agency may adopt rule if the legislative committees of both houses fail to find the rule unacceptable or, if found unacceptable by a legislative committee of either house, if the governor disapproves committee action. Otherwise, it may not adopt the rule unless changed and approved by the committee.<br>Agency may adopt fee if a legislative committee of one house fails to find the fee unacceptable. The governor has no authority to disapprove. |
| * * * | Effective date of adopted rule or fee is date of State Register publication of such rule or fee, unless rule or law provides later date | Final rules or fees are effective after adoption by the agency and upon publication in the State Register, unless a later date is provided in the rule, fee, or by law. |
| *Emergency Rules and Emergency Fees*<br><br>Adoption or 60 days from adoption | Emergency rule or emergency fee is effective on date of adoption, or date specified by agency not more than 60 days from adoption provided written notice is given within 5 days of adoption to governor, attorney general, speaker, president, and Department of State Register (R.S. 49:951(7) and 954(B)(2)). | Agency may adopt emergency rule or emergency fee if emergency criteria are met. Emergency rule may be invalidated by declaratory judgment that it does not meet emergency criteria. (R.S. 49:953(B)(3)) Emergency rule is null upon agency receipt of report from oversight committee or governor that the rule is unacceptable. (R.S. 49:953(B)(4)) |
| * * * | Not effective beyond publication date of State Register published in month following the month adopted, unless such rule or fee and the reasons for adoption are published (however, not effective for longer than 120 days) (R.S. 49:954(B)(2)). | Agency must publish emergency rule or emergency fee and the reasons for adoption in the State Register published the month after the month of adoption to continue effectiveness, provided not effective longer than 120 days. |

This table uses the term legislative committee to include oversight committees of legislative committee. It should be noted that the APA authorizes and provides for oversight subcommittees of legislative committees to conduct hearings and make determinations; however, it also provides that the full committee may exercise this authority.

This table is a summary and does not purport to fully reflect the law. Please refer to the APA at LSA R.S. 49:950 et seq.

*Revised by House Legislative Services 2/7/00.*

0201#083

# Administrative Code Update

**CUMULATIVE: JANUARY – DECEMBER 2001**

| LAC Title | Part.Section | Effect | Location LR 27 Month | Page |
|---|---|---|---|---|
| **4** | I.Chapter 1 | Amended | Oct. | 1688 |
| | I.Chapter 7 | Adopted | Apr. | 524 |
| | VI.1720-1731 | Adopted | Apr. | 528 |
| | VI.1731-1735 | Repealed | Apr. | 528 |
| | VII.Chapter 7 | Repealed | Oct. | 1689 |
| | VII.1199 | Amended | Jan. | 50 |
| | VII.1245 | Adopted | Sept. | 1518 |
| **7** | XV.Chapter 1 | Amended | Aug. | 1175 |
| | XV.327 | Adopted | Mar. | 280 |
| | XXI.143,147 | Amended | Mar. | 279 |
| | XXI.Chapter 3 | Amended | Feb. | 182 |
| | XXI.305 | Repealed | Feb. | 182 |
| | XXI.307-311 | Amended | Feb. | 182 |
| | XXIII.101, 103,111,115,117 | Amended | Dec. | 2084 |
| | XXIII.143 | Amended | Oct. | 1672 |
| | XXV.119,141 | Amended | Aug. | 1179 |
| | XXV.119 | Amended | Dec. | 2084 |
| | XXVII.128 | Amended | June | 815 |
| | XXIX.117 | Amended | Nov. | 1832 |
| | XXIX.Chapter 15 | Adopted | Jan. | 31 |
| | XXXI .1501,1503,1507 | Amended | July | 1005 |
| | XXXV.135 | Adopted | Oct. | 1672 |
| **10** | XI.501 | Repealed | Sept. | 1512 |
| | XI.501 | Repealed | Oct. | 1690 |
| | XII.101-113 | Adopted | May | 688 |
| | XVII.701 | Adopted | Sept. | 1512 |
| | XVII.701 | Repromulgated | Oct. | 1690 |
| **22** | I.341-365 | Adopted | Mar. | 413 |
| | I.Chapter 23 | Adopted | Mar. | 409 |
| | III.4703 | Amended | Jan. | 49 |
| **25** | IX.303-331,501-507 | Amended | Oct. | 1673 |
| **28** | I.103 | Amended | Mar. | 283 |
| | I.307 | Amended | July | 1012 |
| | I.901 | Amended | Jan. | 32 |
| | I.901 | Amended | Feb. | 184 |
| | I.901 | Amended | Feb. | 185 |
| | I.901 | Amended | Feb. | 185 |
| | I.901 | Amended | Feb. | 187 |
| | I.901 | Amended | Feb. | 187 |
| | I.901 | Amended | May | 694 |
| | I.901 | Amended | May | 695 |
| | I.901 | Amended | May | 694 |
| | I.901 | Amended | June | 815 |
| | I.901 | Amended | July | 1005 |
| | I.901 | Amended | Aug. | 1181 |
| | I.901 | Amended | Aug. | 1182 |
| | I.901 | Amended | Aug. | 1183 |
| | I.901 | Amended | Sept. | 1512 |
| | I.901 | Amended | Oct. | 1674 |
| | I.901 | Amended | Nov. | 1832 |
| | I.901 | Amended | Nov. | 1833 |
| | I.901 | Amended | Nov. | 1840 |
| | I.901 | Amended | Dec. | 2086 |
| | I.901 | Amended | Dec. | 2095 |
| | I.903 | Amended | Mar. | 281 |
| | I.903 | Amended | Mar. | 282 |
| | I.903 | Amended | June | 820 |
| | I.903 | Amended | June | 821 |
| | I.903 | Amended | June | 821 |
| | I.903 | Amended | June | 825 |
| | I.903 | Amended | June | 827 |
| | I.903 | Amended | June | 828 |
| | I.903 | Amended | Aug. | 1189 |
| | I.903 | Amended | Aug. | 1190 |
| | I.903 | Amended | Sept. | 1516 |
| | I.903 | Amended | Oct. | 1676 |
| **28** | I.903 | Amended | Oct. | 1680 |
| | I.903 | Amended | Dec. | 2096 |
| | I.903 | Amended | Dec. | 2096 |
| | I.903 | Amended | Dec. | 2099 |
| | I.917 | Amended | Aug. | 1192 |
| | IV.101,105,107,109,111 | Repromulgated | Nov. | 1840 |
| | IV.103 | Amended | Nov. | 1840 |
| | IV.301,509,703,803,2103 | Amended | Jan. | 36 |
| | IV.301,509,903 | Amended | Mar. | 284 |
| | IV.301,703 | Amended | Aug | 1219 |
| | IV.301 | Amended | Nov. | 1840 |
| | IV.301,2103 | Amended | Nov. | 1875 |
| | IV.501,503,505,507,509,701 | Repromulgated | Nov. | 1840 |
| | IV.703 | Amended | May | 702 |
| | IV.703,803,903,1103,2303 | Amended | Aug. | 1219 |
| | IV.703,705,801,803,805,901,911 | Amended | Nov. | 1840 |
| | IV.903,905,907,909, 1101,1103 | Repromulgated | Nov. | 1840 |
| | IV.1105,1107, 1109,1111,1301 | Repromulgated | Nov. | 1840 |
| | IV.1303,1701,1703,1901,1903 | Amended | Nov. | 1840 |
| | IV.1305,1501,1503,1705,2101 | Repromulgated | Nov. | 1840 |
| | IV.2103 | Amended | Nov. | 1840 |
| | IV.2105,2107,2109,2113,2115 | Repromulgated | Nov. | 1840 |
| | IV.2113 | Adopted | Aug. | 1219 |
| | IV.2301,2303,2305,2307,2309 | Repromulgated | Nov. | 1840 |
| | IV.2311,2313 | Repromulgated | Nov. | 1840 |
| | V.109 | Amended | Jan. | 35 |
| | V.113 | Amended | Aug. | 1218 |
| | VI.101,107 | Amended | Nov. | 1876 |
| | VI.103,105 | Repromulgated | Nov. | 1876 |
| | VI.107,307 | Amended | Aug. | 1221 |
| | VI.107,307,311 | Amended | Jan. | 37 |
| | VI.209 | Amended | Feb. | 190 |
| | VI.209 | Amended | Aug. | 1221 |
| | VI.301,305,307,309,311,313, 315 | Amended | Nov. | 1876 |
| | VI.303 | Adopted | Nov. | 1876 |
| | VI.315 | Amended | Aug. | 1221 |
| | XXI.301-305,311,503,507,515 | Amended | Oct. | 1684 |
| | XXV.303 | Amended | Feb. | 187 |
| | XLI.503,903,1105 | Amended | Oct. | 1684 |
| | XLIII.130,1431,1441,1449,2001 | Amended | Jan. | 34 |
| | XLIX.Chapters 1-35 | Adopted | Dec. | 2100 |
| | XXXIX.305,307 | Amended | Sept. | 1517 |
| | XXXIX.503 and 1301 | Amended | July | 1006 |
| | XXXIX.503,505,509,513 | Amended | Oct. | 1682 |
| | XXXIX.519,1301 | Amended | Oct. | 1682 |
| | XXXIX.507 | Repealed | Oct. | 1682 |
| **32** | III.101 | Amended | May | 721 |
| | III.317,323 | Amended | May | 720 |
| | III.321,701 | Amended | May | 722 |
| | III.323,601,701 | Amended | May | 721 |
| | III.323,701 | Amended | Nov. | 1887 |
| | III.701 | Amended | May | 719 |
| | III.701 | Amended | May | 720 |
| | III.Chapter 19 | Amended | Nov. | 1888 |
| | V.101 | Amended | May | 718 |
| | V.325,601,701 | Amended | May | 718 |
| | V.701 | Amended | May | 716 |
| | V.317,325 | Amended | May | 717 |
| | V.325,701 | Amended | Nov | 1886 |
| **33** | I.3917 | Repromulgated | Jan. | 38 |
| | I.3931 | Amended | Dec. | 2228 |
| | III.223 | Repromulgated | Feb. | 192 |
| | III.504 | Amended | Dec. | 2224 |
| | III.507,1432,3003 | Amended | Dec. | 2228 |
| | III.509,510 | Amended | Dec. | 2233 |
| | III.2131 | Amended | Feb. | 192 |
| | III.2156,2157,2158,2159,2160 | Amended | Aug. | 1223 |
| | III.2707,2721 | Amended | Aug. | 1222 |
| | III.2811 | Repromulgated | Jan. | 38 |

| LAC Title | Part.Section | Effect | Location LR 27 Month | Page |
|---|---|---|---|---|
| **33** | III.5116,5122,5311 | Amended | Dec. | 2228 |
| | V.Chapters 1,3,9,11,13,15,22,30 | Amended | May | 706 |
| | V.101 | Amended | June | 857 |
| | V.105,109,110,322,529,535,537 | Amended | Mar. | 290 |
| | V.108,1109,5137 | Amended | May | 715 |
| | V.Chapter 4 | Adopted | Mar. | 284 |
| | V.517,5111 | Amended | Mar. | 284 |
| | V.903,915,917,919 | Repealed | Jan. | 41 |
| | V.905,907,913,1107,1111 | Amended | Jan. | 41 |
| | V.905,1109,1127,1531,1705 | Amended | Mar. | 290 |
| | V.1109,2231 | Amended | July | 1014 |
| | V.1309 | Repromulgated | Jan. | 41 |
| | V.2214,2245,3001,3003 | Amended | Mar. | 290 |
| | V.Chapter 30 | Adopted | Dec. | 2228 |
| | V.3011,3025,3105,3115,3203 | Amended | Mar. | 290 |
| | V.3011,3025 | Repromulgated | Apr. | 513 |
| | V.Chapters 38,40,41,43,49 | Amended | May | 706 |
| | V.3801 | Repromulgated | Sept. | 1518 |
| | V.3809,3813,3821,3823,3843 | Amended | Mar. | 290 |
| | V.3845,4513,4901,4909 | Amended | Mar. | 290 |
| | V.Chapter 39 | Repealed | May | 706 |
| | V.10117,10121 | Amended | Dec. | 2259 |
| | V.Chapter 301 | Amended | Sept. | 1522 |
| | V.30114,30147,30191,30248 | Adopted | Sept. | 1522 |
| | V.30250,30264,30296,30299 | Adopted | Sept. | 1522 |
| | V.30301,30303,30305,30307 | Adopted | Sept. | 1522 |
| | V.Chapter 304 | Adopted | Sept. | 1522 |
| | VI.Chapter 9 | Adopted | Apr. | 514 |
| | VII.Chapter 105 | Amended | June | 829 |
| | VII.303,305,701,711-717,721,723 | Repromulgated | May | 703 |
| | VII.725,1109 | Repromulgated | May | 705 |
| | VII.727,1109 | Repromulgated | Jan. | 38 |
| | VII.10505,10507,10519 | Amended | Dec. | 2226 |
| | VII.10523 | Repromulgated | Nov. | 1885 |
| | VII.10525,10533,10535 | Amended | Dec. | 2226 |
| | IX.1113,1123 | Amended | Mar. | 288 |
| | IX.2301,2531,2533,2709 | Amended | Dec. | 2228 |
| | IX.2331,2381,2383,2385,2769 | Amended | Jan. | 45 |
| | IX.2341 | Repromulgated | Jan. | 38 |
| | IX.2609 | Amended | Feb. | 191 |
| | IX.2801-2809 | Adopted | Jan. | 45 |
| | XI.103,1121 | Amended | Apr. | 520 |
| | XI.1111 | Amended | Dec. | 2228 |
| | XI.Chapter 12 | Adopted | Apr. | 520 |
| | XV.Chapters 1,3,4,5,6,7,13,15 | Amended | Aug. | 1225 |
| | XV.1517 | Amended | Dec. | 2228 |
| **34** | VII.307 | Repromulgated | Jan. | 49 |
| **35** | XIII.Chapter 120 | Adopted | May | 689 |
| **37** | XI.505,509,511,517 | Amended | Dec. | 2253 |
| | XI.527,529 | Repealed | Dec. | 2253 |
| | XI.703-731 | Amended | Apr. | 561 |
| | XIII.Chapter 99 | Adopted | Apr. | 548 |
| **40** | I.5157 | Amended | Mar. | 314 |
| **42** | VII.2325 | Amended | Dec. | 2255 |
| | VII.2901 | Amended | Jan. | 58 |
| | VII.2933 | Amended | Feb. | 204 |
| | VII.2953,3305 | Amended | Sept. | 1555 |
| | VII.2954,3304 | Adopted | Sept. | 1555 |
| | IX.2901 | Amended | Jan. | 58 |
| | IX.2922,2923,3305 | Amended | Sept. | 1555 |
| | IX.2924 | Repealed | Sept. | 1555 |
| | IX.2939 | Amended | Feb. | 204 |
| | IX.3304 | Adopted | Sept. | 1555 |
| | IX.4103 | Amended | Dec. | 2255 |
| | XI.2405 | Amended | Jan. | 61 |
| | XI.2407 | Amended | Feb. | 204 |
| | XI.2417 | Amended | Jan. | 59 |
| | XI.2901 | Amended | Jan. | 58 |
| | XI.3305 | Amended | Nov. | 1926 |
| | XIII.2325 | Amended | Dec. | 2255 |
| | XIII.2901 | Amended | Jan. | 60 |
| | XIII.2933 | Amended | Feb. | 204 |
| **42** | XIII.2953,3305 | Amended | Sept. | 1555 |
| | XIII.2954,3304 | Adopted | Sept. | 1555 |
| **43** | XIII.Chapters 1-29 | Amended | Sept. | 1535 |
| | XIII.502,1933 | Adopted | Sept. | 1535 |
| | XIII.Chapter 30 | Adopted | Sept. | 1535 |
| | XVII.101,105,107,109 | Amended | Oct. | 1697 |
| | XIX.104 | Amended | Nov. | 1917 |
| | XIX.433 | Adopted | Nov. | 1921 |
| | XIX.501,503,505,507,509,511, | Amended | Nov. | 1897 |
| | XIX.515,517,525,527,529,531 | Adopted | Nov. | 1897 |
| | XIX.513,519,521,523 | Amended | Nov. | 1897 |
| | XIX.533,535,537,539,541,543 | Adopted | Nov. | 1897 |
| | XIX.545,547,549,565,567,569 | Adopted | Nov. | 1897 |
| | XIX.701,703,705,707 | Amended | Nov. | 1919 |
| **46** | I.901 | Amended | Oct. | 1687 |
| | I.1121 | Adopted | Oct. | 1686 |
| | I.1123 | Adopted | Oct. | 1686 |
| | I.1505 | Amended | Mar. | 280 |
| | III.1109 | Amended | Dec. | 2237 |
| | XXI.Chapter 3 | Amended | Feb. | 183 |
| | XXXIII.103,116,301,314,316 | Amended | Nov. | 1890 |
| | XXXIII.105,116,120,306 | Amended | Nov. | 1893 |
| | XXXIII.502,503,706,710,1305 | Amended | Nov. | 1893 |
| | XXXIII.512,720 | Adopted | Nov. | 1890 |
| | XXXIII.701,710,903,907,909 | Amended | Nov. | 1890 |
| | XXXIII.1607 | Amended | Nov. | 1893 |
| | XXXIII.1619 | Adopted | Nov. | 1893 |
| | XXXV.103,105,903,905,1303 | Amended | Feb. | 193 |
| | XXXV.1401-1409,1503 | Amended | Feb. | 193 |
| | XLV.Chapters 3 and 4 | Amended | June | 835 |
| | XLV.326, 345, 373, 375 | Repealed | June | 835 |
| | XLV.359, 401, 418 | Repromulgated | June | 835 |
| | XLV.377, 409, and Chapter 11 | Repealed | June | 835 |
| | XLV.9917 | Amended | Dec. | 2236 |
| | XLVII.3331 | Amended | Feb. | 202 |
| | XLVII.3335 | Amended | May | 729 |
| | XLVII.3419 | Amended | May | 727 |
| | XLVII.Chapter 35 | Amended | June | 851 |
| | XLVII.Chapter 45 | Amended | May | 723 |
| | LVII.103,105,509,515,518,721 | Amended | Apr. | 563 |
| | LVII.501 | Amended | Aug. | 1240 |
| | LVII.512 | Amended | July | 1016 |
| | LVII.518 | Amended | July | 1016 |
| | LVII.915 | Amended | Apr. | 563 |
| | LIX.301,405 | Amended | Aug. | 1241 |
| | LIX.703 | Amended | May | 735 |
| | LXIII.201 | Adopted | May | 723 |
| | LXIII.303 | Amended | Nov. | 1895 |
| | LXIII.503 | Amended | June | 835 |
| | LXXVI.Chapter 1 | Repromulgated | May | 732 |
| | LXXXV.Chapters 1-7 | Amended | Feb. | 196 |
| | LXXXV.107,111,121 | Repromulgated | Oct. | 1690 |
| | LXXXV.700,705 | Amended | Jan. | 51 |
| | LXXXV.700, 1101-1123 | Amended | Apr. | 543 |
| | LXXXV.1039 | Amended | Aug. | 1238 |
| **48** | I.Chapter 79 | Adopted | Sept. | 1564 |
| | I.Chapter 91 | Amended | Dec. | 2238 |
| | I.9704 | Adopted | Mar. | 311 |
| | I.Chapter 171 | Amended | Mar. | 312 |
| | V.6303 | Amended | Apr. | 545 |
| | V.7001-7007 | Amended | Jan. | 52 |
| | V.7707-7719 | Amended | Sept. | 1520 |
| | V.7707-7719 | Repromulgated | Oct. | 1691 |
| | V.Chapter 119 | Adopted | Mar. | 308 |
| | IX.107 | Amended | June | 854 |
| **51** | I.Chapter 1 | Adopted | Oct. | 1693 |
| **55** | I.503,505,507,509 | Amended | Nov. | 1929 |
| | I.2101 | Adopted | Feb. | 205 |
| | I.Chapter 23 | Adopted | Feb. | 205 |
| | I.2323 | Adopted | Mar. | 424 |
| | I.Chapter 25 | Amended | Sept. | 1580 |
| | I.Chapter 27 | Repromulgated | Oct. | 1701 |

| LAC Title | Part.Section | Effect | Location LR 27 Month | Page |
|---|---|---|---|---|
| **55** | III.Chapter 1 | Adopted | Jan. | 62 |
| | III.185,187 | Adopted | Nov. | 1928 |
| | III.805,807,819,833 | Amended | Dec. | 2260 |
| | III.1555,1557,1569 | Amended | Nov. | 1927 |
| | III.1573,1575,1577 | Adopted | Nov. | 1927 |
| | V.103 | Amended | June | 857 |
| | V.103 | Amended | Dec. | 2257 |
| | VII.303 | Amended | Nov. | 1931 |
| | IX.107,166 | Amended | Dec. | 2256 |
| | IX.121 | Amended | Mar. | 422 |
| | IX.181 | Amended | Dec. | 2256 |
| | IX.1501,1513,1519,1531 | Amended | Mar. | 423 |
| | IX.1507,1513 | Repromulgated | Apr. | 565 |
| **58** | I.Chapter 25 | Amended | Sept. | 1580 |
| | III.1501 | Adopted | May | 737 |
| **61** | I.902 | Adopted | Oct. | 1705 |
| | I.1303 | Adopted | Dec. | 2261 |
| | I.4301 | Amended | Oct. | 1703 |
| | I.4314 | Adopted | Dec. | 2261 |
| | I.4905 | Amended | July | 1017 |
| | I.4911 | Adopted | Aug. | 1241 |
| | III.101 | Adopted | Feb. | 207 |
| | III.1503 | Amended | Mar. | 428 |
| | III.1505 | Repealed | Mar. | 428 |
| | III.2005,2007 | Amended | July | 1017 |
| | III.2101 | Amended | June | 866 |
| | III.5383 | Adopted | Mar. | 428 |
| | III.Chapter 54 | Adopted | July | 1018 |
| | V.2503,2705,2707 | Amended | Mar. | 424 |
| | V.3510 | Adopted | Dec. | 2263 |
| **67** | III.517 | Amended | Sept. | 1561 |
| | III.1223,1247 | Amended | Dec. | 2263 |
| | III.1235 | Amended | May | 736 |
| | III.1235 | Amended | June | 866 |
| | III.1503 | Amended | Mar. | 428 |
| | III.1505 | Repealed | Mar. | 428 |
| | III.1947,1949,1983,1987 | Amended | June | 867 |
| | III.1949,1983,1987 | Amended | Nov. | 1934 |
| | III.2009 | Amended | Nov. | 1933 |
| | III.2013,2015 | Amended | June | 867 |

| LAC Title | Part.Section | Effect | Location LR 27 Month | Page |
|---|---|---|---|---|
| **67** | III.2529,2531 | Amended | Jan. | 81 |
| | III.2545 | Adopted | Dec. | 2264 |
| | III.5102 | Adopted | Nov. | 1932 |
| | III.5103,5107,5109 | Amended | Nov. | 1932 |
| | III. | Amended | Nov. | 1933 |
| | III.Chapter 52 | Adopted | Mar. | 429 |
| | III.5205 | Amended | Sept. | 1559 |
| | III.5323,5327 | Amended | Dec. | 2264 |
| | III.5383 | Adopted | Mar. | 428 |
| | III.5501 | Adopted | Dec. | 2265 |
| | V.3503 | Amended | May | 735 |
| | V.3510 | Adopted | Dec. | 2263 |
| | VII.109 | Amended | Feb. | 210 |
| | VII.115 | Amended | Sept. | 1561 |
| | LXI.101-105,701-725, 901-909 | Amended | July | 1019 |
| | LXI.301-311, 501-509 | Repealed | July | 1019 |
| | LXI.1101-1105, 1301-1315 | Amended | July | 1019 |
| | LXI.1501-1527, 1701,1703 | Amended | July | 1019 |
| | LXI.1901-1911, 2101, 2103 | Amended | July | 1019 |
| | LXI.2301-2309, 2501-2511 | Amended | July | 1019 |
| | LXI.2701, 2901-2907 | Amended | July | 1019 |
| | LXI.2901-2907, 3101-3121, 3301 | Amended | July | 1019 |
| **71** | I.Chapter 9 | Adopted | May | 736 |
| | III.301,1301 | Amended | Oct. | 1706 |
| | III.1901 | Adopted | Oct. | 1706 |
| **76** | I.327 | Amended | Aug. | 1243 |
| | III.333 | Adopted | June | 868 |
| | V.101 | Repealed | Feb. | 214 |
| | V.119 | Amended | Nov. | 1935 |
| | V.319 | Adopted | July | 1062 |
| | V.501 | Adopted | Feb. | 214 |
| | VII.355,357 | Amended | Dec. | 2266 |
| | VII.361 | Amended | Dec. | 2269 |
| | VII.363 | Adopted | Dec. | 2266 |
| | VII.407 | Amended | Feb. | 215 |
| | VII.517 | Adopted | Feb. | 214 |
| | VII.517 | Repromulgated | Mar. | 431 |
| | VII.703 | Amended | Dec. | 2269 |
| | XIX.101,103 | Amended | July | 1061 |
| | XIX.111 | Amended | July | 1049 |
| | XIX.113,115, 117 | Amended | Dec. | 2270 |

# Potpourri

## POTPOURRI

**Department of Agriculture and Environmental Sciences**
**Office of Agriculture and Environmental Sciences**
**Boll Weevil Eradication Commission**

Adjudicatory HearingCEstablishment of 2002 Assessment

The Boll Weevil Eradication Commission will hold an adjudicatory hearing beginning at 10:00 a.m., March 7, 2002 at the Louisiana Department of Agriculture and Forestry, First Floor Auditorium, located at 5825 Florida Boulevard, Baton Rouge, LA, relative to the setting of the assessments levied upon cotton producers for each acre of cotton planted for the 2002 crop year pursuant to R.S. 3:1613 and LAC 7:XV.321. Said assessment shall not exceed $35 per acre of cotton planted for 2002 in the Red River Eradication Zone and $15 per acre of cotton planted for 2002 in the Louisiana Eradication Zone. Calculations made to date indicate that the assessments should not, in actuality, exceed $10 per acre for the Red River Eradication Zone and $15 per acre for the Louisiana Eradication Zone.

All interested persons are invited to attend and will be afforded an opportunity to participate in the adjudicatory hearing. Written comments will be accepted if received prior to March 7, 2002, P.O. Box 3596, Baton Rouge, LA 70821-3596.

Dan P. Logan, Jr.
Chairman

0212#026

## POTPOURRI

**Departmentof Agriculture and Forestry**
**Office of Forestry**
**and**
**Department of Revenue**
**Louisiana Tax Commission**

Timber Stumpage Values

The Louisiana Department of Agriculture and Forestry, Office of Forestry is hereby giving notice of the stumpage values that were adopted at the joint meeting of the Forestry Commission and Tax Commission held on December 10, 2001. The following stumpage values were adopted for the purpose of determining timber severance tax for calendar year 2002.

The Louisiana Forestry Commission, and the Louisiana Tax Commission, as required by R.S. 47:633, determined the following timber stumpage values based on current average stumpage market values to be used for severance tax computations for 2002.

| Trees and Timber | Price/Scale | Price/Ton |
|---|---|---|
| Pine Sawtimber | $343.55/MBF | $42.94/Ton |
| Hardwood Sawtimber | $246.47/MBF | $25.94/Ton |
| Pine Chip and Saw | $96.23/CD | $35.64/Ton |
| **Pulpwood** | | |
| Pine Pulpwood | $21.64/CD | $8.01/Ton |
| Hardwood Pulpwood | $11.79/CD | $4.14/Ton |

Signed and attested to this day of January 2002.

Bob Odom
Commissioner

0201#072

## POTPOURRI

**Department of Agriculture and Forestry**
**Horticulture Commission**

Landscape Architect Registration Exam

The next landscape architect registration examination will be given June 10-12, 2002, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, Louisiana. The deadline for sending the application and fee is as follows:

| | |
|---|---|
| New Candidates: | February 22, 2002 |
| Re-Take Candidates: | March 8, 2002 |
| Reciprocity Candidates: | May 3, 2002 |

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to February 22, 2002. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0108#030

## POTPOURRI

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

Board Nominations

The Louisiana Board of Veterinary Medicine announces that nominations for the position of Board Member will be taken by the Louisiana Veterinary Medical Association (LVMA) at the annual winter meeting to be held in late February 2002. Interested persons should submit the names of nominees directly to the LVMA as per R.S. 37:1515. It is not necessary to be a member of the LVMA to be nominated. The LVMA may be contacted at (225) 928-5862.

Kimberly B. Barbier
Administrative Director

0201#036

## POTPOURRI

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

Fee Schedule

Following are the fees that are charged by the Louisiana Board of Veterinary Medicine.

Doctors of Veterinary Medicine:

| | |
|---|---|
| Annual Active Renewal Fee | $175 |
| Annual Inactive Renewal Fee | $ 75 |
| Renewal Late Fee | $125 |
| Renewal Late CE Fee | $ 25 |
| DVM Original License Fee | $150 |
| Application Fee (Initial) | $ 50 |
| State Board Examination Fee | $175 |
| Duplicate Wall Certificate Fee | $ 25 |

Registered Veterinary Technicians:

| | |
|---|---|
| Annual Renewal Fee | $ 30 |
| Late Renewal Fee | $ 20 |
| Examination Fee (VTNE) | |
| (does not include exam vendor's cost) | $ 40 |
| Original Certification Fee | $ 30 |
| Initial Application Fee | $ 25 |

Certified Animal Euthanasia Technicians:

| | |
|---|---|
| Annual Renewal Fee | $ 50 |
| Late Renewal Fee | $ 25 |
| Course Fee | $ 80 |
| Examination Fee | $ 50 |
| Original Full Certification Fee | $ 50 |
| Temporary Certification Fee | $ 50 |
| Initial Application Fee | $ 25 |

Registered Equine Dentists:

| | |
|---|---|
| Original Registration Fee | $200 |
| Annual Renewal Fee | $125 |
| Late Renewal Fee | $100 |
| Initial Application Fee | $100 |

Kimberly B. Barbier
Administrative Director

0201#037

## POTPOURRI

### Department of Natural Resources
### Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

| Operator | Field | District | Well Name | Well Number | Serial Number |
|---|---|---|---|---|---|
| Ambrit Energy Corp. | Larto Lake | M | LTL WX F RB SU; Missiana HB | 007 | 205894 (30) |
| Legendary Oil Co., Inc. | Edgerly | L | J F Lillard | 001 | 46576 |
| Legendary Oil Co., Inc. | Edgerly | L | Gulf Refining Co Fee | 001 | 46969 |
| Legendary Oil Co., Inc. | Edgerly | L | W C Gilbert et al | 001 | 48700 |
| Legendary Oil Co., Inc. | Edgerly | L | Gulf Refining Co Fee | 002 | 49229 |
| Legendary Oil Co., Inc. | Edgerly | L | J F Lillard | 003 | 49547 |
| Legendary Oil Co., Inc. | Edgerly | L | J F Lillard | 005 | 124973 |
| Legendary Oil Co., Inc. | Edgerly | L | J F Lillard | 006 | 128718 |
| Legendary Oil Co., Inc. | Edgerly | L | Gulf Refining Fee SWD | 003 | 130753 |
| Legendary Oil Co., Inc. | Edgerly | L | J F Lillard | 007 | 132894 |
| Legendary Oil Co., Inc. | Edgerly | L | J F Lillard | 008 | 150649 |
| Legendary Oil Co., Inc. | Edgerly | L | J F Lillard | 009 | 162247 |
| Legendary Oil Co., Inc. | Iota | L | Emar Lejeune | 001 | 179958 |
| H. G. Smith | North Big Island | M | PAUL 1 SU 253; School Board | 001 | 105157 |
| H. G. Smith | North Big Island | M | School Board SWD | 001 | 105720 |
| H. G. Smith | North Big Island | M | PAUL 1 SU 240; School Board | 004 | 175308 |
| H. G. Smith | North Big Island | M | School Board | 003 | 186630 |

Philip N. Asprodites
Commissioner

0201#061

## POTPOURRI

### Department of Natural Resources
### Office of Conservation
### Injection and Mining Division

Public HearingCBear Creek Environmental Systems

Pursuant to the provisions of the laws of the State of Louisiana and particularly Title 30 of the Revised Statutes of 1950 as amended, and the provisions of the Statewide Order No. 29-B, notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6 p.m., Wednesday,

March 6, 2002, at the Police Jury Meeting Room, Room Number 106, Bienville Parish Courthouse, 100 Courthouse Drive, Arcadia, Louisiana.

At such hearing, the Commissioner, or his designated representative, will hear testimony relative to the application of Bear Creek Environmental Systems, LLC, 22911 Highway 9, Gibsland, Louisiana 71028. The applicant requests approval from the Office of Conservation to construct and operate a commercial deep well injection waste disposal facility to receive, store and dispose of nonhazardous (exploration and production) waste (NOW/E&P Waste) fluids. The proposed facility will be located approximately two miles north of Bryceland, Louisiana, off Highway 9, Township 17 North, Range 6 West, Section 14 in Bienville Parish.

The application is available for inspection by contacting Gary W. Snellgrove, Office of Conservation, Injection and Mining Division, Eighth Floor, LaSalle Office Building, 617 North Third Street, Baton Rouge, Louisiana. Copies of the application will be available for review at the Bienville Parish Police Jury Office in Arcadia, Louisiana, or the Bienville Parish Public Library in Arcadia, Louisiana. Verbal information may be received by calling Mr. Snellgrove at (225) 342-5515.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Wednesday, March 13, 2002, at the Baton Rouge Office. Comments should be directed to Office of Conservation, Injection and Mining Division, P.O. Box 94275, Baton Rouge, Louisiana 70804, Re: Docket No. IMD 2002-04, Commercial Facility, Bienville Parish.

Philip N. Asprodites
Commissioner of Conservation

0201#057

## POTPOURRI

### Department of Natural Resources
### Office of Conservation
### Injection and Mining Division

Public HearingCTrinity Storage Services

Pursuant to the provisions of the laws of the State of Louisiana and particularly Title 30 of the Louisiana revised Statutes of 1950 as amended, and the provisions of the Statewide Order No. 29-B, notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6 p.m., Wednesday, February 27, 2002, at the Port Sulphur Civic Center, 278 Civic Drive, Port Sulphur, Louisiana 70083.

At such hearing, the Commissioner, or his designated representative, will continue to hear testimony relative to the application of Trinity Storage Services, L.P. dba Trinity Field Services, L.P., 3700 Buffalo Speedway, Suite 1000, Houston, Texas 77098-3705. A hearing in this matter was previously conducted on January 9, 2002.

The applicant requests approval from the Office of Conservation to construct and operate a commercial transfer station facility to receive, temporarily store and transfer nonhazardous (exploration and production) waste (NOW/E&P Waste). Applicant intends to transfer E&P Waste to a permitted disposal facility located in Texas. The proposed facility will be located in Venice, Louisiana, Township 21 South, Range 31 East, Sections 19 and 20 of Plaquemines Parish, at the end of McDermott Road.

The application is available for inspection by contacting Gary W. Snellgrove, Office of Conservation, Injection & Mining Division, Eighth Floor, LaSalle Office Building, 617 North Third Street, Baton Rouge, Louisiana. Copies of the application will be available for review at the Plaquemines Parish Government Administration Building, 28028 Hwy. 23 South, Port Sulphur, Louisiana 70083, or the Plaquemines Parish Library in Buras, Louisiana. Verbal information may be received by calling Mr. Snellgrove at (225) 342-5515.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments, which will not be presented at the hearing, must be received no later than 4:30 p.m., Wednesday, March 6, 2002, at the Baton Rouge Office. Comments should be directed to Office of Conservation, Injection and Mining Division, P.O. Box 94275, Baton Rouge, Louisiana 70804, Re: Docket No. IMD 2002-02, Commercial Facility, Plaquemines Parish.

Philip N. Asprodites
Commissioner of Conservation

0201#056

## POTPOURRI

### Department of Natural Resources
### Office of the Secretary
### Fishermen's Gear Compensation Fund

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 14 claims in the amount of $51,343.32 were received for payment during the period December 1, 2001-December 31, 2001. There were 14 claims paid and 0 claims denied.

Loran Coordinates of reported underwater obstructions are:

| | | |
|---|---|---|
| 27971 | 46834 | Terrebonne |
| 28055 | 46832 | Terrebonne |
| 28540 | 46895 | Jefferson |
| 28568 | 46863 | Jefferson |

Latitude/Longitude Coordinates of reported underwater obstructions are:

| | | |
|---|---|---|
| 2915.732 | 9005.733 | Lafourche |
| 2916.610 | 8952.010 | Jefferson |
| 2916.797 | 8942.622 | Jefferson |
| 2931.740 | 9007.730 | Jefferson |
| 2932.036 | 9009.015 | Lafourche |
| 2935.129 | 9003.854 | Jefferson |
| 2943.330 | 9002.190 | Plaquemines |
| 2948.170 | 8858.430 | St. Bernard |
| 2950.974 | 9319.753 | Cameron |

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Jack C. Caldwell
Secretary

0201#077

## 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) Child and Family Services Plan is a planning document which outlines the goals and objectives/outcomes for the Office of Community Services for the time period of October 1, 1999 through September 30, 2004 with regard to the use of Title IV-B, Subpart 1 and Subpart 2, Title IV-E Independent Living Initiative and Child Abuse Prevention and Treatment Act (CAPTA) funds. The Annual Progress and Service Report 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 Child and Family Services Plan. The 2001 Annual Progress and Service Report provides information on the achievement of goals and objectives for year two of the Child and Family Services Plan.

Louisiana through the DSS Office of Community Services (OCS) provides services which include Child Protection Investigations, Family Services, Foster Care, Adoption and the John H. Chafee Independence 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 Independent 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 21years 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 Child Abuse Prevention and Treatment Act funding is used to compliment 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 Child and Family Services Plan and Consolidated Plan and the Annual Progress and Services Report is available for public review at 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, 701 N. Fourth Street, Baton Rouge, LA and its repositories statewide. Inquiries and comments on the plan may be submitted to the OCS Assistant Secretary, P. O. Box 3318, Baton Rouge, LA 70821.

A public hearing on the Child and Family Service Plan and the Annual Progress and Services Report is scheduled for March 6, 2002 at 9 a.m. at the Office of Community Services, Room 732, Laurel Street, Baton Rouge. At the public hearing, all interested persons will have the opportunity to provide recommendations on the plan, orally or in writing.

Gwendolyn P. Hamilton
Secretary

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## POTPOURRI

### Office of Transportation and Development
### Crescent City Connection Division

Public HearingCBridge Toll Exemptions for Law
Enforcement Personnel

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is given that the Department of Transportation and Development, Crescent City Connection Division, is seeking to incorporate substantive changes to the proposed amendment to the regulations governing the bridge toll exemption for law enforcement personnel, LAC 70:1.513, which was originally noticed in the October 20, 2001 edition of the *Louisiana Register*.

A public hearing on the substantive changes will be held on February 25, 2002, at 11:00 a.m. at the offices of the Crescent City Connection Division, 2001 Mardi Gras Boulevard, New Orleans, LA 70114. Interested persons are invited to attend and submit oral comments.

Written comments regarding the substantive changes must be received no later than February 25, 2002, at 4:30 p.m., and should be sent to Mr. Alan J. LeVasseur, P.O. Box 6297, New Orleans, Louisiana 70174.

A marked version of the proposed rule amendment, which distinguishes the originally proposed language from the substantially changed language, is available for inspection at the offices of the Crescent City Connection Division, 2001 Mardi Gras Boulevard, New Orleans, LA 70114, from 8:00 a.m. to 4:30 p.m., Monday through Friday.

Alan J. LeVasseur
Executive Director

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PPM**C**Policy and Procedure Memoranda
ER**C**Emergency Rule
R**C**Rule
N**C**Notice of Intent
C**C**Committee Report
L**C**Legislation
P**C**Potpourri