

**I. EXECUTIVE ORDERS**  
 MJF 03-09 Bond AllocationC Industrial District No. 3 of the Parish of West Baton Rouge, State of Louisiana ..... 819  
 MJF 03-10 Prohibited Expenditure of State Monies..... 819  
 MJF 03-11 Bond AllocationC Louisiana Public Facilities Authority ..... 820

**II. POLICY AND PROCEDURE MEMORANDA**  
**Governor**  
 Division of Administration, Office of State TravelC General TravelC PPM 49 (LAC 4:V.Chapter 15) ..... 822

**III. EMERGENCY RULES**  
**Agriculture and Forestry**  
 Office of the CommissionerC Chloramphenicol in Shrimp and CrawfishC Testing and Sale  
 (LAC 7:XXXV.137 and 139) ..... 831

**Economic Development**  
 Louisiana Economic Development Corporation, Office of Business DevelopmentC University Foundation  
 Investment Program (LAC 19:VII.Chapter 27) ..... 834

**Governor**  
 Division of Administration, Office of Group BenefitsCEPO Plan of BenefitsC Employer Responsibility  
 (LAC 32:V.417) ..... 837  
 PPO Plan of BenefitsC Employer Responsibility (LAC 32:III.417) ..... 837

**Health and Hospitals**  
 Office of the Secretary, Bureau of Community Supports and ServicesC Home and Community Based  
 Services WaiverC New Opportunities Waiver (LAC 50:XXI.Chapter 137 and 139) ..... 848  
 Mentally Retarded/Developmentally Disabled WaiverC Skilled Nursing Services ..... 846  
 Office of the Secretary, Bureau of Health Services FinancingC Disproportionate Share Hospital Payment  
 Methodologies (LAC 50:V.Chapter 3) ..... 847  
 Early and Periodic Screening, Diagnosis and Treatment Dental ProgramC Reimbursement  
 (LAC 50:XV.6903) ..... 852  
 Medicaid EligibilityC Qualified IndividualsC Medicare Part B Buy-In ..... 853  
 Pharmacy Benefits Management ProgramC Prescription Limit ..... 853  
 Private HospitalsC Inpatient ServicesC Reimbursement Reduction ..... 854  
 Private HospitalsC Outpatient ServicesC Reimbursement Reduction ..... 855  
 Rehabilitation ServicesC Reimbursement Fee Increase ..... 856  
 Private Inpatient Psychiatric ServicesC Reimbursement Reduction ..... 857  
 Private Intermediate Care Facilities for the Mentally RetardedC Reimbursement Reduction ..... 858

**IV. RULES**  
**Agriculture and Forestry**  
 Office of Agriculture and Environmental Sciences, Boll Weevil Eradication CommissionC Program  
 Participation, Fee Payment and Penalties (LAC 7:XV.321) ..... 859

**Economic Development**  
 Office of Business Development, Business Resources DivisionC Louisiana Small Business Linked  
 Deposit Loan Program (LAC 19:VII.7303 and 7305) ..... 859  
 Office of Business Development, Economic Development CorporationC Economic Development Award  
 Program (EDAP) (LAC 13:III.Chapter 1) ..... 860

**Education**  
 Board of Elementary and Secondary EducationC Bulletin 741C Louisiana Handbook for School  
 AdministratorsC Louisiana Principal/Assistant Principal Induction Program (LAC 28:I.901) ..... 865  
 Bulletin 1706C Regulations for Implementation of the Children with Exceptionalities Act Students with  
 Disabilities (LAC 28:XLIII.Chapters 1-10) ..... 867  
 Student Financial Assistance Commission, Office of Student Financial AssistanceC Scholarship/Grant  
 Programs (LAC 28:IV.301, 701, 805, 1703, and 1705) ..... 879

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**Governor**

Division of Administration, Office of Group BenefitsCManaged Care Option (MCO)CPlan of Benefits (LAC 32:IX.Chapters 1-7) ..... 883

**Health and Hospitals**

Office of the Secretary, Bureau of Health Services FinancingCAbortion Facility Licensure (LAC 48:I.Chapter 44) ..... 902  
Freedom of Choice Waivers (LAC 50:I.Chapter 29)..... 908  
Medicaid EligibilityCExpansion of Coverage for Low Income Pregnant Women ..... 910  
Medicaid EligibilityCInclusion of the Unborn Child ..... 910  
Medicaid EligibilityCIncome Disregards for Low Income Pregnant Women ..... 910  
Nursing Facility ServicesCStandards for Payment Ventilator Dependent CareCRequirement for Payments (LAC 50:II.10155) ..... 911  
Personal Care ServicesCLong Term Care (LAC 50:XV.Chapter 129)..... 911  
Private HospitalsCOutlier Payments ..... 914

**Natural Resources**

Office of ConservationCDisposal of Exploration and Production Waste (LAC 43:XVII.Chapter 31 and XIX.Chapter 5) ..... 914  
Surface Mining (LAC 43:XV.105, 1105-1109-2111, 2113, 2311, 2323, 2731, 2733, 3103, 3115, 3705, 5423, 5424, and 5425) ..... 939

**Revenue**

Office of the SecretaryCPenalty Waiver (LAC 61:III.2101) ..... 950  
Policy Services DivisionCNatural Resources: Severance TaxCDefinition of Payout (LAC 61:I.2903) ..... 951

**State**

Office of the Secretary, Division of ArchivesCRecords Management Policies and Practices (LAC 4:XVII.Chapters 1-9 and 13-15)..... 951

**V. NOTICES OF INTENT**

**Civil Service**

Civil Service CommissionCMarket Grade Adjustment; Rate of Pay upon Promotion; Pay upon Reallocation; Pay upon Job Correction or Grade Assignment; Rate of Pay upon Demotion; Gainsharing and Exceptional Performance ..... 964

**Economic Development**

Office of the SecretaryCCapital Companies Tax Credit Program (LAC 10:XV.327) ..... 966

**Education**

Board of Elementary and Secondary EducationCBulletin 104CK-12 Educational Technology Standards (LAC 28:LXXV.Chapter 1)..... 967  
Bulletin 741CLouisiana Handbook for School AdministratorsCPolicy for Louisiana’s Public Education Accountability System (LAC 28:I.901) ..... 971  
Bulletin 746CLouisiana Standards for State Certification of School PersonnelCValidity, Reinstatement, Renewal, and Extension of Certificates (LAC 28:I.903)..... 977  
Bulletin 1196CLouisiana Food and Nutrition ProgramsCPolicies of Operation (LAC 28:XLIX) ..... 979  
Student Financial Assistance CommissionCOffice of Student Financial AssistanceCScholarship/Grant Programs (LAC 28:IV.701-705, 805, and 2103)..... 996

**Environmental Quality**

Office of Environmental Assessment, Environmental Planning DivisionCConcentrated Animal Feeding Operations (LAC 33:IX.2331, 2335, 2345, 2357, and 2533)(WQ050\*) ..... 998  
Incorporation by Reference of Amendments to 40 CFR Part 63 (LAC 33:III.5122)(AQ233\*) ..... 1003  
Minerals Criteria Revision for Vermilion River, Bayou Tech, Bayou Courtableau, and West Atchafalaya Borrow Pit Canal (LAC 33:IX.1123)(WQ048) ..... 1004  
NRC Amendments to Radiation Protection Regulations (LAC 33:XV.430, 440, 441, 442, 543, 544, 575, 577, 1739, 1755, 2003, 2014, 2017, 2022, 2036, 2051, and Chapter 20)(RP032\*) ..... 1006  
Radiation Protection (LAC 33:XV.212, 320, 545, 590, 2504, and 2506)(RP033) ..... 1012  
Site-Specific Criteria Adjustment for Bayou Chinchuba and Tchefuncte River Wetlands (LAC 33:IX.1123)(WQ049) ..... 1014  
Waste Tire Fee Reporting (LAC 33:VII.10519)(SW036)..... 1016

**Governor**

Division of Administration, Office of Group BenefitsCEPO Plan of BenefitsCEmployer Responsibility (LAC 32:V.417)..... 1017  
PPO Plan of BenefitsCEmployer Responsibility (LAC 32:III.417) ..... 1018

**Health and Hospitals**

Board of NursingCAdministration of Medications to Children in Detention Facilities (LAC 22:I.Chapter 5) ..... 1019  
Definitions (LAC 46:XLVII.3503) ..... 1020  
Office of the Secretary, Bureau of Health Services FinancingCMedicaid EligibilityCApplication Date ..... 1021  
Medicaid EligibilityCTANFCElimination of Work Related Sanctions..... 1022

**Public Safety and Corrections**

Gaming Control BoardC Code of Conduct of Licensees, Permittees, Casino Operator, and Casino Manager; Methods to Prevent Minors from Gaming Area; Licensees and Permittees; Age Restrictions for the Casino; Surveillance Personnel Employment Provisions; Approval of New Electronic Gaming Devices; Enforcement Actions of the Board (LAC 42:VII.2901, 2915 and 4209; IX.2901, 2935, 4103 and 4209; XIII.2901, 2915, 3304 and 4209) ..... 1023

Office of the SecretaryC Administration of Medications to Children in Detention Facilities (LAC 22:I.Chapter 5) ..... 1019

**Social Services**

Office of Family SupportC Child Care Assistance Program (CCAP)C Conditions of Eligibility; Activity Hours; Payment (LAC 67:III.5103 and 5109)..... 1026

**VI. POTPOURRI**

**Governor**

Oil Spill Coordinator's OfficeC Public MeetingsC Louisiana Regional Restoration Planning ..... 1029

Restoration PlanningC Plaquemines Parish North Pass Oil Spill..... 1029

**Health and Hospitals**

Office of Management and Finance, Division of Management and Finance, Division of Research and Development, Office of Primary Care and Rural HealthC Community-Based and Rural Health Program Grants ..... 1030

**Natural Resources**

Office of the Secretary, Fishermen's Gear Compensation FundC Loran Coordinates ..... 1032

Office of ConservationC Orphaned Oilfield Sites ..... 1032

**Transportation and Development**

Sabine River Compact AdministrationC Meeting NoticeC Sabine River Compact Administration..... 1033

**VII. INDEX** ..... 1034

# Executive Orders

## EXECUTIVE ORDER MJF 03-09

Bond AllocationC Industrial District No. 3 of the Parish of West Baton Rouge, State of Louisiana

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, 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 2003 (hereafter "the 2003 Ceiling");
2. the procedure for obtaining an allocation of bonds under the 2003 Ceiling; and
3. a system of central record keeping for such allocations; and

WHEREAS, the Industrial District No. 3 of the parish of West Baton Rouge, state of Louisiana, has requested an allocation from the 2003 Ceiling to be used in connection with a program to provide financing for the acquisition, construction and installation of certain water pollution control facilities at the chemical plant complex of The Dow Chemical Company located at the corner of Woodland Road and the east side of Louisiana Highway No. 1 Frontage Road, parish of West Baton Rouge, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the private activity bond volume limits for the calendar year of 2003 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$16,000,000	Industrial District No. 3 of the Dow Chemical Company	Parish of West Baton Rouge, State of Louisiana

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

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 2003, provided that such bonds are delivered to the initial purchasers thereof on or before August 8, 2003.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the 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 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 12th day of May, 2003.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0306#003

## EXECUTIVE ORDER MJF 03-10

Prohibited Expenditure of State Monies

WHEREAS, Article IV, Section 5(A) of the Louisiana Constitution declares that the governor shall faithfully support the constitution and laws of the state and the United States and shall see that the laws are faithfully executed;

WHEREAS, Article III, Section 16(A) of the Louisiana Constitution declares that no money shall be withdrawn from the state treasury except through specific appropriations, except as otherwise provided by the constitution;

WHEREAS, Article VII, Section 10(D)(1) of the Louisiana Constitution declares that money shall be drawn from the state treasury only pursuant to an appropriation made in accordance with law, except as otherwise provided by the constitution;

WHEREAS, Article XII, Section 10(C) of the Louisiana Constitution declares that no judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered;

WHEREAS, thirty-five coroners filed suit against the state of Louisiana in *Warren W. Hoag, Jr., et al. v. State of Louisiana, through its Treasurer, John Neely Kennedy*, 19th Judicial District Court, Parish of East Baton Rouge, No. 471,708, for past due and future extra compensation pursuant to R.S. 33:1559 which provides that extra compensation for coroners in the amount of \$548.00 shall be payable monthly by the state treasurer on the warrant of the coroners *from funds appropriated by the legislature for this purpose*, and in *Hoag v. State*, 2001-1076 (La. App.1 Cir. 11/20/02), 836 So. 2d 207, *writ den.*, 2002-3199 (La.

3/28/03), 840 So. 2d 570, the First Circuit Court of Appeal held that the legislature's failure to appropriate funds for payment of the extra compensation to coroners violated Article V, Section 31 of the Louisiana Constitution which provides that the salary of a coroner shall not be diminished during his term of office; despite this holding, no reduction or diminution of salary has occurred during the coroners' term of office since the extra compensation has not been appropriated for or paid to the coroners during their term of office or after their election to office;

WHEREAS, the judgment against the state in *Warren W. Hoag, Jr., et al. v. State of Louisiana, through its Treasurer, John Neely Kennedy*, 19th Judicial District Court, Parish of East Baton Rouge, No. 471,708, is now final and demand has been made upon the state treasurer for the immediate full payment of the judgment, plus interest, without funds having been appropriated by the legislature for payment of the judgment;

WHEREAS, House Bill No. 1632 of the 2003 Regular Session of the Louisiana Legislature provides for the appropriation of the amount of the judgment in *Warren W. Hoag, Jr., et al. v. State of Louisiana, through its Treasurer, John Neely Kennedy*, 19th Judicial District Court, Parish of East Baton Rouge, No. 471,708, plus legal interest until paid, but the bill is still pending before the legislature;

WHEREAS, R.S. 39:77 prohibits the expenditure of any monies in excess of the funds appropriated or otherwise allocated for expenditure by any board, commission, department, or agency of the state during any fiscal year unless approval for the expenditure has been obtained from the interim emergency board and/or the Legislature by a two-thirds vote of the members thereof taken by mail ballot; and

WHEREAS, in the absence of an appropriation by the legislature, the withdrawal, expenditure, or disbursement of monies from the state treasury to pay the warrants of the coroners or the judgment against the state in *Warren W. Hoag, Jr., et al. v. State of Louisiana, through its Treasurer, John Neely Kennedy*, 19th Judicial District Court, Parish of East Baton Rouge, No. 471,708, would have the effect of creating a deficit in the state general fund and be in violation of constitutional and statutory requirements placed upon the withdrawal, disbursement, or expenditure of monies from the state treasury;

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: I hereby declare and certify that, based on the official forecast for the state general fund established by the Revenue Estimating Conference compared to total authorized appropriations from the state general fund, without a specific appropriation from the legislature, the withdrawal, disbursement, or expenditure of any monies from the state treasury on the warrant of the coroners or to satisfy, in whole or in part, the judgment against the state in *Warren W. Hoag, Jr., et al. v. State of Louisiana, through its Treasurer, John Neely Kennedy*, 19th Judicial District Court, Parish of East Baton Rouge, No. 471,708, would have the effect of creating a deficit in the state general fund and be in violation of the requirements placed upon the expenditure of monies by the legislature and the people of Louisiana.

SECTION 2: As chief executive officer of the state of Louisiana, with the constitutional duty and authority to protect and preserve the public fisc and to see that the constitution and laws of this state pertaining to the expenditure of state monies are faithfully executed, I hereby order that the state treasurer shall not withdraw, disburse, or expend any monies from the state treasury on the warrant of the coroners or to satisfy, in whole or in part, the judgment against the state in *Warren W. Hoag, Jr., et al. v. State of Louisiana, through its Treasurer, John Neely Kennedy*, 19th Judicial District Court, Parish of East Baton Rouge, No. 471,708, without a specific appropriation from the legislature that has become law.

SECTION 3: This Order is effective upon signature.

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 23rd day of May, 2003.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0306#005

#### EXECUTIVE ORDER MJF 03-11

Bond Allocation Louisiana Public Facilities Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, 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 2003 (hereafter "the 2003 Ceiling");
2. the procedure for obtaining an allocation of bonds under the 2003 Ceiling; and
3. a system of central record keeping for such allocations; and

WHEREAS, the Louisiana Public Facilities Authority has requested an allocation from the 2003 Ceiling to finance student loans which, if the student meets certain timely payment requirements, will have interest rates below the interest rates established by the United States Department of Education and which

1. have been made
  - a. to residents of the state of Louisiana attending a post-secondary school located within or without the state of Louisiana; or
  - b. to an out-of-state resident attending a post-secondary school located within the state of Louisiana;
2. are guaranteed;
3. are "eligible student loans" within the meaning of the Higher Education Act of 1965; and
4. meet certain additional requirements under the financing documents, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the private activity bond volume limits for the calendar year of 2003 as follows:

<b>Amount of Allocation</b>	<b>Name of Issuer</b>	<b>Name of Project</b>
\$67,200,000	Louisiana Public Facilities Authority	Student Loan Revenue Bonds

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

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 2003, provided that such bonds are delivered to the initial purchasers thereof on or before September 2, 2003.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the 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 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 4th day of June, 2003.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0306#036

# Policy and Procedure Memoranda

## POLICY AND PROCEDURE MEMORANDA

Office of the Governor  
Division of Administration  
Office of State Travel

General Travel C PPM 49  
(LAC 4:V.Chapter 15)

The following PPM 49 supersedes all prior issues of PPM 49 published in the Louisiana Register. This revised PPM 49 also supersedes and replaces PPM 49 which had been designated as LAC 4:V.Chapter 15.

### Title 4

### ADMINISTRATION

### Part V. Policy and Procedure Memoranda

### Chapter 15. General Travel Regulations C PPM Number 49

#### §1501. Authorization and Legal Basis

A. In accordance with the authority vested in the commissioner of administration by Section 231 of Title 39 of the Revised Statutes of 1950 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950-968 as amended, notice is hereby given of the revision of Policy and Procedures Memorandum No. 49, the state general travel regulations, effective July 1, 2003. These amendments are both technical and substantive in nature and are intended to clarify certain portions of the previous regulations or provide for more efficient administration of travel policies. These regulations apply to all state departments, boards and commissions created by the legislature or executive order and operating from funds appropriated, dedicated, or self-sustaining; federal funds; or funds generated from any other source.

B. Legal Basis L.R.S. 39:231. "The commissioner, with the approval of the governor, shall prescribe rules defining the conditions under which each of various forms of transportation may be used by state officers and employees and used by them in the discharge of the duties of their respective offices and positions in the state service and he shall define the conditions under which allowances will be granted for all other classes of traveling expenses and the maximum amount allowable for expenses of each class."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1252 (June 2000), LR 27:802 (June 2001), LR 28:1125 (June 2002), LR 29:822 (June 2003).

#### §1502. Definitions

A. For the purposes of this PPM, the following words have the meaning indicated.

#### *Authorized Persons*

a. advisors, consultants, contractors and other persons who are called upon to contribute time and services to the state who are not otherwise required to be reimbursed through a contract for professional, personal, or consulting services in accordance with R.S. 39:1481 et seq.;

b. members of boards, commissions, and advisory councils required by federal or state legislation or regulation. Travel allowance levels for all such members and any staff shall be those authorized for state employees unless specific allowances are legislatively provided.

*Conference/Convention* is herein defined as a meeting (other than routine) for a specific purpose and/or objective. Non-routine meetings can be defined as a seminar, conference, convention, or training. Documentation required is a formal agenda, or program, or Letter of Invitation, or registration fee. Participation as an exhibiting vendor in an exhibit/trade show also qualifies as a conference. (For a hotel to qualify for conference rate lodging, requires that the hotel is hosting or is in "conjunction with hosting" the meeting.)

*Emergency Travel* under extraordinary circumstances where the best interests of the state require that travel be undertaken not in compliance with these regulations, approval after the fact by the commissioner of administration may be given if appropriate documentation is presented promptly. Each department shall establish internal procedures for authorizing travel in emergency situations.

*Extended Stays* of any assignment made for a period of 31 or more consecutive days at a place other than the official domicile.

*In-State Travel* all travel within the borders of Louisiana or travel through adjacent states between points within Louisiana when such is the most efficient route.

*International Travel* all travel to destinations outside the 50 United States, District of Columbia, Puerto Rico and the Virgin Islands.

*Official Domicile* every state officer, employee, and authorized person, except those on temporary assignment, shall be assigned an official domicile.

a. Except where fixed by law, official domicile of an officer or employee assigned to an office shall be, at a minimum, the city limits in which the office is located. The department head or his designee should determine the extent of any surrounding area to be included, such as parish or region. As a guideline, a radius of at least 30 miles is recommended. The official domicile of an authorized person shall be the city in which the person resides, except when the department head has designated another location (such as the person's workplace).

b. A traveler whose residence is other than the official domicile of his/her office shall not receive travel and subsistence while at his/her official domicile nor shall he/she receive reimbursement for travel to and from his/her residence.

c. The official domicile of a person located in the field shall be the city or town nearest to the area where the majority of work is performed, or such city, town, or area as may be designated by the department head, provided that in all cases such designation must be in the best interest of the agency and not for the convenience of the person.

*Out-of-State Travel* C travel to any of the other 49 states plus District of Columbia, Puerto Rico and the Virgin Islands.

*Per Diem* Ca flat rate paid in lieu of travel reimbursement for people on extended stays.

*Receipts/Document Requirements* C supporting documentation must be retained according to record retention laws. It shall be at the discretion of each agency to determine where the receipts/documents will be maintained.

*State Employee* C employees below the level of state officer

*State Officer* C

a. state elected officials;

b. department head as defined by Title 36 of the Louisiana Revised Statutes (secretary, deputy secretary, under secretary, assistant secretary, and the equivalent positions in higher education and the office of elected officials).

*Temporary Assignment* C any assignment made for a period of less than 31 consecutive days at a place other than the official domicile.

*Travel Period* Ca period of time between the time of departure and the time of return.

*Travel Routes* C the most direct and usually traveled route must be used by official state travelers. Travelers may opt to use mileage as shown on the mileage table of Department of Transportation's Official Highway Map, or from a mileage chart provided by their department which has been approved by the Commissioner of Administration. For all other mileage, it shall be computed on the basis of odometer readings from point of origin to point of return. (See Mileage Chart)

*Traveler* Ca state officer, state employee, or authorized person when performing authorized travel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1252 (June 2000), LR:802 (June 2001), LR 28:1125 (June 2002), LR 29:822 (June 2003).

### **§1503. General Specifications**

#### **A. Department Policies**

1. Department heads may establish travel regulations within their respective agencies, but such regulations shall not exceed the maximum limitations established by the commissioner of administration. Three copies of such regulations shall be submitted for prior review and approval by the commissioner of administration. One of the copies shall highlight any exceptions /deviations to PPM 49.

2. Department and agency heads will take whatever action necessary to minimize all travel to carry on the department mission.

3. Contracted Travel Services. The state has contracted for travel agency services which use is mandatory for airfares unless exemptions have been granted by the Division of Administration prior to travel. The state also encourages the use of the contracted travel agency to make reservations for hotel and vehicles accommodations, but hotel and vehicles are not a mandatory requirement.

4. When a state agency enters into a contract with an out-of-state public entity, the out-of-state public entity may have the authority to conduct any related travel in accordance with their published travel regulations.

#### **5. Authorization to Travel**

a. All travel must be authorized and approved in writing by the head of the department, board, or commission from whose funds the traveler is paid. A department head may delegate this authority in writing to one designated person. Additional persons within a department may be designated with approval from the commissioner of administration. A file shall be maintained on all approved travel authorizations.

b. An annual authorization for routine travel shall not cover travel between an employee's home and workplace, out-of-state travel, or travel to non-routine meetings such as conferences and conventions.

#### **B. Funds for Travel Expenses**

1. Persons traveling on official business will provide themselves with sufficient funds for all routine travel expenses that cannot be covered by the corporate credit card. Advances of funds for travel shall be made only for extraordinary travel and should be punctually repaid when submitting the travel voucher covering the related travel, not later than the fifteenth day of the month following the completion of travel.

2. Exemptions. At the Agency's discretion, cash advances may be allowed for:

a. employees whose salary is less than \$30,000/year;

b. employees who applied for the state-sponsored corporate credit card program but were rejected (proof of rejection must be available in agency travel file);

c. employees who accompany and/or are responsible for students on group or client travel;

d. new employees who are infrequent travelers or have not had time to apply for and receive the card;

e. employees traveling for extended periods, defined as 31 or more consecutive days;

f. employees traveling to remote destinations in foreign countries, such as jungles of Peru or Bolivia;

g. advanced ticket/lodging purchase;

h. registration for seminars, conferences, and conventions;

i. incidental costs not covered by the corporate credit card, i.e., taxi fares, tolls, registration fees; conference fees may be submitted on a preliminary request for reimbursement when paid in advance;

j. any ticket booked by a traveler 30 days or more in advance and for which the traveler has been billed, may be reimbursed by the agency to the traveler on a preliminary expense reimbursement request. The traveler should submit the request with a copy of the bill or invoice. Passenger airfare receipts are required for reimbursement;



k. employees who infrequently travel or travelers that incur significant out-of-pocket cash expenditures.

3. Expenses Incurred on State Business. Traveling expenses of travelers shall be limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the agency and must be within the limitations prescribed herein.

4. State Credit Cards (Issued in the Name of the Agency Only). Credit cards issued in the name of the state agency are not to be used for the purpose of securing transportation, lodging, meals, or telephone and telegraph service, unless prior written permission has been obtained from the commissioner of administration.

5. No Reimbursement When No Cost Incurred by Traveler. This includes but is not limited to reimbursements for any lodging and/or meals furnished at a state institution or other state agency, or furnished by any other party at no cost to the traveler. In no case will a traveler be allowed mileage or transportation when he/she is gratuitously transported by another person.

#### C. Claims for Reimbursement

1. All claims for reimbursement for travel shall be submitted on state Form BA-12, unless exception has been granted by the commissioner of administration, and shall include all details provided for on the form. It must be signed by the person claiming reimbursement and approved by his/her immediate supervisor. The purpose for extra and unusual travel must be stated in the space provided on the front of the form. In all cases the date and hour of departure from and return to domicile must be shown.

2. Excepting where the cost of air transportation, conference, or seminar is invoiced directly to the agency/department, all expenses incurred on any official trip shall be paid by the traveler and his travel voucher shall show all such expenses in detail to the end that the total cost of the trip shall be reflected by the travel voucher. If the cost of air transportation is paid directly by the agency/department, a notation will be indicated on the travel voucher indicating the date of travel, destination, amount, and the fact that it has been paid by the agency/department. The traveler's copy of the passenger receipt is required.

3. In all cases, and under any travel status, cost of meals and lodging shall be paid by the traveler and claimed on the travel voucher for reimbursement, and not charged to the state department, unless otherwise authorized by the Division of Administration.

4. Claims should be submitted within the month following the travel, but preferably held until a reimbursement of at least \$10 is due. Department heads at their discretion may make the 30 day submittal mandatory on a department wide basis.

5. Any person who submits a claim pursuant to these regulations and who willfully makes and subscribes to any claim which he/she does not believe to be true and correct as to every material matter, or who willfully aids or assists in, or procures, counsels or advises the preparation or presentation of a claim which is fraudulent or is false as to any material matter shall be guilty of official misconduct. Whoever shall receive an allowance or reimbursement by means of a false claim shall be subject to severe disciplinary action as well as being criminally and civilly liable within the provisions of state law.

6. Agencies are required to reimburse travel in an expeditious manner. In no case shall reimbursements require more than 30 days to process from receipt of complete, proper travel documentation.

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#### §1504. Methods of Transportation

A. Cost-Effective Transportation. The most cost-effective method of transportation that will accomplish the purpose of the travel shall be selected. Among the factors to be considered should be length of travel time, employee's salary, cost of operation of a vehicle, cost and availability of common carrier services, etc.

##### B. Air

1. Common carrier shall be used for out-of-state travel unless it is documented that utilization of another method of travel is more cost-efficient or practical and approved in accordance with these regulations.

2. Before travel by privately-owned or by chartered aircraft is authorized by a department head, the traveler shall certify that at least one hour of working time will be saved by such travel; and no other form of transportation, such as commercial air travel or a state plane, will serve this same purpose.

a. Chartering a privately-owned aircraft must be in accordance with the Procurement Code.

b. Reimbursement for use of a chartered or unchartered privately-owned aircraft under the above guidelines will be made on the following basis:

i. at the rate of 32 cents per mile; or

ii. at the lesser of state contract rate or coach economy airfare.

If there are extenuating circumstances requiring reimbursement for other than listed above, approval must be granted by the commissioner of administration.

c. When common carrier services are unavailable and time is at a premium, travel via state aircraft shall be investigated, and such investigation shall be documented and readily available in the department's travel reimbursement files. Optimum utilization will be the responsibility of the department head.

3. Commercial air travel will not be reimbursed in excess of state contract air rates when available, or coach/economy class rates when contract rates are not available (receipts required). The difference between contract or coach/economy class rates and first class or business class rates will be paid by the traveler. If space is not available in less than first or business class air accommodations in time to carry out the purpose of the travel, the traveler will secure a certification from the airline indicating this fact. The certification is required for travel reimbursement.

a. The state encourages but does not require use of lowest priced airfares where circumstances which can be

documented dictate otherwise. Lowest logical fares are penalty tickets that can have restrictions and charge penalty fees for changing/canceling ticket purchases. Lowest logical tickets must be purchased from the state's contracted travel agency unless prior approval is granted by the State Travel Office.

b. Where a stopover is required to qualify for a low-priced airfare, the state will pay additional lodging and meals expense subject to applicable limits where a net savings in total trip expenses results from use of the low-priced airfare. For determining whether there is a savings, the state contract airfare should be used for comparison, or coach/economy fare if there is no contract rate. If additional work time will be lost, then the cost of the traveler's time is to be used in the calculation. The comparison must be shown on the travel voucher.

c. The policy regarding airfare penalties is the state will pay the penalty incurred for a change in plans or cancellation only when the change or cancellation is required by the state. Certification of the requirement for the change or cancellation by the traveler's department head is required on the travel voucher.

d. For international travel only, when an international flight segment is more than 10 hours in duration, the state will allow the business class rate not to exceed 10 percent of the coach rate. The traveler's itinerary provided by the travel agency must document the flight segment as more than 10 hours and must be attached to the travel voucher.

4. A lost airline ticket is the responsibility of the person to whom the ticket was issued. The airline charge of searching and refunding lost tickets will be charged to the traveler. The difference between the prepaid amount and the amount refunded by the airlines must be paid by the employee.

5. If companion fares are purchased for a state employee and non-state employee, the reimbursement to the state employee will be the amount of the lowest logical fare.

6. Contract airfares are to be purchased only through the state's contracted travel agencies and are to be used for official state business. State contract airfares are non-penalty tickets. Therefore no penalty fees are charged for changes/cancellations, and no restrictions are imposed on flight schedules. The state contract airfares cannot be used for personal/companion or spouse travel. This is a requirement of the airlines and our failure to monitor the use of these contract airfares could cause their cancellation. (Therefore, persons booking tickets for non-official business using contract rates will be subject to disciplinary action as well as payment of the difference between contract fare and full coach fare.)

7. Traveler is to use the lowest logical airfare/state contract whether the plane is a prop or a jet.

8. Employees may retain promotional items, including frequent flyer miles, earned on official state travel. However, if an employee makes travel arrangements that favor a preferred airline/supplier to receive promotional items/points and this circumvents purchasing the most economical means of travel, they are in violation of this travel policy. Costs for travel arrangements subject to this violation are non-reimbursable.

9. In order for the state to continue to receive state contracted airfares, it is necessary that the contract carrier be utilized when electing to use state contract rates. When using the Contract Airfares there are no restrictions or penalties. In many cases, airlines that did not win an award for a certain city will now offer the same discounted price that was awarded to the contract vendor. This is known as a matched carrier. Matched carriers are not to be used unless there is two or more hours difference in the departure or arrival time. The state does not have a contract with the matched fare carriers; therefore, we do not have last seat availability and certain rules including cancellation penalties will apply to these fares. Once the decision is made not to use the contract fare you are giving up your option for the non-penalty ticket, and must use the lowest logical fare available.

10. When making airline reservations for a conference, inform the travel agency that you are attending a conference giving the name of the conference and the airline that is offering the discount rate, if available. In many instances, the conference registration form specifies that certain airlines have been designated as the official carrier offering discount rates. If so, giving this information to our contracted agencies could result in them securing that rate for your travel.

#### 11. Use of Corporate Card

a. The State Travel Office contracts an official state corporate card to form one source of payment for travel. All travelers or agencies shall make application through the State Travel Office.

b. The corporate card or BTA (Business Travel Account) must be used to purchase contract airfare. This is a mandatory requirement by the airlines in order to continue to receive discount, non penalty state contract airline tickets.

c. The corporate card is the liability of the employee and not the state.

d. The Department/Agency is responsible for cancellation of Corporate Cards for those employees terminating/retiring state service.

#### C. Motor Vehicle

1. No vehicle may be operated in violation of state or local laws. No traveler may operate a vehicle without having in his/her possession a valid U.S. driver's license.

2. Safety restraints shall be used by the driver and passengers of vehicles. All accidents, major and minor, shall be reported first to the local police department or appropriate law enforcement agency. An accident report form, available from the Office of Risk Management (ORM) of the Division of Administration, should be completed as soon as possible and returned to ORM, together with names and addresses of principals and witnesses. Any questions about this should be addressed to the Office of Risk Management of the Division of Administration. These reports shall be in addition to reporting the accident to the Department of Public Safety as required by law.

#### 3. State-Owned Vehicles

a. All purchases made on state gasoline credit cards must be signed for by the approved traveler making the purchase. The license number, the unit price, and quantity of the commodity purchased must be noted on the delivery ticket by the vendor. Items incidental to the operation of the vehicle may be purchased via state gasoline credit cards only

when away from official domicile on travel status. In all instances where a credit card is used to purchase items or services which are incidental to the operation of a vehicle, a copy of the credit ticket along with a written explanation of the reason for the purchase will be attached to the monthly report mentioned in this subsection. State-owned credit cards will not be issued to travelers for use in the operation of privately-owned vehicles.

b. Travelers in state-owned automobiles who purchase needed repairs and equipment while on travel status shall make use of all fleet discount allowances and state bulk purchasing contracts where applicable. Each agency/department shall familiarize itself with the existence of such allowances and/or contracts and location of vendors by contacting the Purchasing Office, Division of Administration.

c. The travel coordinator/officer/user of each state-owned automobile shall submit a monthly report to the department head, board, or commission indicating the number of miles traveled, odometer reading, credit card charges, dates, and places visited.

d. State-owned vehicles may be used for out-of-state travel only if permission of the department head has been given prior to departure. If a state-owned vehicle is to be used to travel to a destination more than 500 miles from its usual location, documentation that this is the most cost-effective means of travel should be readily available in the department's travel reimbursement files.

e. Unauthorized persons should not be transported in state vehicles. Approval of exceptions to this policy may be made by the traveler's supervisor if he determines that the best interest of the state will be served and if the passenger (or passenger's guardian) signs a statement acknowledging the fact that the state assumes no liability for any loss, injury, or death resulting from said travel.

#### 4. Personally-Owned Vehicles

a. When two or more persons travel in the same personally-owned vehicle, only one charge will be allowed for the expense of the vehicle. The person claiming reimbursement shall report the names of the other passengers.

b. A mileage allowance shall be authorized for travelers approved to use personally-owned vehicles while conducting official state business. Mileage shall be reimbursable on the basis of 32 cents per mile. (see acceptable mileage chart included in this guide).

c. An employee shall never receive any benefit from not living in his/her official domicile. In computing reimbursable mileage to an authorized travel destination from an employee's residence outside the official domicile, the employee is always to claim the lesser of the miles from their official domicile or from their residence. If an employee is leaving on a non-work day or leaving significantly before or after work hours, the department head may determine to pay the actual mileage from the employee's residence.

d. The department head or his designee may approve an authorization for routine travel for an employee who must travel in the course of performing his/her duties; this may include domicile travel if such is a regular and necessary part of the employee's duties, but not for attendance at infrequent or irregular meetings, etc. Within

the city limits where his/her office is located, the employee may be reimbursed for mileage only.

e. Reimbursements will be allowed on the basis of 32 cents per mile to travel between a common carrier/terminal and the employee's point of departure, i.e., home, office, etc., whichever is appropriate and in the best interest of the state.

f. When the use of a privately-owned vehicle has been approved by the department head for out-of-state travel for the traveler's convenience, the traveler will be reimbursed for in-route expenses on the basis of 32 cents per mile only. The total cost of the mileage may not exceed the cost of travel by State Contract air rate or lowest logical if no contract rate is available. The traveler is personally responsible for any other expenses in-route to and from destination which is inclusive of meals and lodging. If a traveler, at the request of the department, is asked to take their personally owned vehicle out-of-state for a purpose that will benefit the agency, then the department head may on a case-by-case basis determine to pay a traveler for all/part of in-route travel expenses. File should be justified accordingly.

g. When a traveler is required to regularly use his/her personally-owned vehicle for agency activities, the agency head may request authorization from the commissioner of administration for a lump sum allowance for transportation or reimbursement for transportation (mileage). Request for lump sum allowance must be accompanied by a detailed account of routine travel listing exact mileage for each such route. Miscellaneous travel must be justified by at least a three-month travel history to include a complete mileage log for all travel incurred, showing all points traveled to or from and the exact mileage. Requests for lump sum allowance shall be granted for periods not to exceed one fiscal year.

h. The traveler shall be required to pay all operating expenses of the vehicle including fuel, repairs, and insurance.

#### 5. Rented Motor Vehicles

a. Written approval of the department head prior to departure is required for the rental of vehicles. Such approval may be given when it is shown that vehicle rental is the only or most economical means by which the purposes of the trip can be accomplished. In each instance, documentation showing cost effectiveness of available options must be readily available in the reimbursement files. This authority shall not be delegated to any other person.

b. Only the cost of rental of a compact model is reimbursable, unless:

- i. non-availability is documented;
- ii. the vehicle will be used to transport more than two persons; or
- iii. the cost of a larger vehicle is no more than the rental rate for a compact.

c. Insurance billed by car rental companies is not reimbursable for domestic travel. At the discretion of the department head, CDW costs only may be reimbursed for international travel. Following are some of the insurance packages available by rental vehicle companies that are not reimbursable.

i. Collision Damage Waiver (CDW). Should a collision occur while on official state business, the cost of the deductible should be paid by traveler and reimbursement

claimed on a travel expense voucher. The accident should also be reported to the Office of Risk Management.

ii. Loss Damage Waiver (LDW)  
 iii. Personal Accident Insurance (PAC) Employees are covered under workmen's compensation while on official state business.

- iv. Auto Tow Protection (ATP)
- v. Emergency Sickness Protection (ESP)
- vi. Supplement Liability Insurance (SLI)

d. Any personal mileage or rental days on a vehicle rented for official state business is not reimbursable and shall be deducted.

e. Reasonable gasoline cost is reimbursable, but not mileage on a rental vehicle. Receipts are required.

D. Public Ground Transportation. The cost of public ground transportation such as buses, subways, airport limousines, and taxis is reimbursable when the expenses are incurred as part of approved state travel. Taxi reimbursement is limited to \$15 per day without receipts; claims in excess of \$15 per day require receipts to account for total daily amount claimed. At the agency's discretion, the department head may implement an agency wide policy requiring receipts for an amount less than \$15 per day.

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**§1505. Lodging and Meals**

A. Eligibility

1. Official Domicile/Temporary Assignment. Travelers are eligible to receive reimbursement for travel only when away from "official domicile" or on temporary assignment unless exception is granted in accordance with these regulations. Temporary assignment will be deemed to have ceased after a period of 31 calendar days, and after such period the place of assignment shall be deemed to be his/her official domicile. He/she shall not be allowed travel and subsistence unless permission to extend the 31 day period has been previously secured from the commissioner of administration.

2. Single Day Travel. To receive any meal reimbursement on single day travel, an employee must be in travel status for a minimum of 12 hours. The maximum allowance for meal reimbursement for single day travel will be \$20.

- a. Breakfast and Lunch: (\$14). The 12 hour travel duration must begin at or before 6 a.m.
- b. Lunch: (\$8). Requires 12 hours duration in travel status.
- c. Lunch and Dinner: (\$20). The 12 hour travel duration must end at or after 8 p.m.

3. Travel with Over Night Stay. Travelers may be reimbursed for meals according to the following schedule.

a. Breakfast. When travel begins at/or before 6 a.m. on the first day of travel and extends beyond 9 a.m. on the last day of travel, and for any intervening days.

b. Lunch. When travel begins at/or before 10 a.m. on the first day of travel and extends beyond 2 p.m. on the last day of travel, and for any intervening days.

c. Dinner. When travel begins at/or before 4 p.m. on the first day of travel and extends beyond 8 p.m. on the last day of travel, and for any intervening days.

4. Alcohol. Reimbursement for alcohol is prohibited.

B. Exceptions

1. Twenty Five Percent over Allowances. Department heads may allow prior approval for their employees to exceed the lodging and meals provisions of these regulations by no more than 25 percent on a case-by-case basis. Each case must be fully documented as to necessity (e.g., proximity to meeting place) and cost effectiveness of alternative options. Documentation must be readily available in the department's travel reimbursement files. This authority shall not be delegated to any other person. Receipts are required for reimbursement.

2. Actual Expenses for State Officers. State officers and others so authorized by statute (See Definitions under Authorized Persons) or individual exception will be reimbursed on an actual expenses basis for meals and lodging except in cases where other provisions for reimbursement have been made by statute. Receipts or other supporting documents are required for each item claimed. Request shall not be extravagant and will be reasonable in relationship to the purpose of travel. State officers entitled to actual expense reimbursements are only exempted from meals and lodging rates; they are subject to the time frames and all other requirements as listed in the travel regulations.

C. Traveler's Meals (Including Tax and Tips)

1. Travelers may be reimbursed up to the following amounts for meals.

	Tier I	Tier II	Tier III	Tier IV
<b>Breakfast</b>	\$ 6	\$ 6	\$ 8	\$ 9
<b>Lunch</b>	\$ 8	\$ 9	\$10	\$11
<b>Dinner</b>	\$12	\$14	\$19	\$20
	\$26	\$29	\$37	\$40

Tier IC In-State cities: with the exception of New Orleans

Tier IIC New Orleans and Out-of-State cities; with the exception of the cities listed in Tier III and Tier IV.

Tier IIIC Atlanta, Baltimore, Cleveland, Dallas/Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, Nashville, Oakland, CA., Philadelphia, Phoenix, Pittsburgh, Portland, OR., San Diego, St. Louis, Seattle, Tampa, FL., Wilmington, De., Puerto Rico, Virgin Islands, all of Alaska and Hawaii

Tier IVC Boston, Chicago, New York City, San Francisco, Washington, DC

2. Receipts are not required for routine meals within these allowances. Number of meals claimed must be shown on travel voucher. Partial meals such as continental breakfasts or airline meals are not considered meals. If meals of state officials exceed these allowances, receipts are required.

**D. Conference Meals**

1. Cost allowance for meals direct billed to agency in conjunction with state-sponsored in-state conferences, plus tax and mandated gratuity.

Lunch in-State excluding New Orleans	\$10
LunchC New Orleans	\$12

2. Conference Refreshment Expenditures. Cost for a meeting, conference or convention are to be within the following rates: (Note: refreshment expenses are not applicable to an individual traveler) served on agency's property: not to exceed \$2 per person, per morning and/or afternoon sessions served on offsite properties that require catered services: not to exceed \$3.50 plus tax and mandated gratuity per person, per morning and/or afternoon sessions

E. Lodging. Employees will be reimbursed lodging rate, plus tax, Receipt Required.

\$55	In-state (except as listed)
\$60	Lafayette, Slidell
\$65	Bossier City, Shreveport
\$70	Baton Rouge, Lake Charles, Gretna, Kenner, Metairie (Sulphur will be considered a suburb of Lake Charles )
\$90	New Orleans
\$65	Out-of-State (except those listed)
\$105	High cost (Atlanta, Baltimore, Cleveland, Dallas/Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, Nashville, Oakland, Ca., Philadelphia, Phoenix, Pittsburgh, Portland, Or., San Diego, St. Louis, Seattle, Tampa, Fl., Wilmington, De., all of Alaska or Hawaii)
\$140	Boston, Chicago, San Francisco, Washington, D.C.
\$165	New York City
The inclusion of suburbs shall be determined by the department head on a case-by-case basis.	

F. Conference Lodging. Employees will be reimbursed lodging rate, plus tax, Receipt Required.

1. Travelers may be reimbursed expenses for conference hotel lodging per the following rates, if the reservations are made at the actual conference hotel. When reservations are not available at the conference hotel and multi-hotels are offered in conjunction with a conference, traveler shall seek prices and utilize the least expensive. In the event all conference hotels are unavailable, then the traveler is subject to making reservations within the hotel rates as allowed in Section E, above.

\$65	In-state (except as listed)
\$70	Bossier City, Shreveport
\$75	Baton Rouge, Lake Charles, Gretna, Kenner, Metairie
\$110	New Orleans, state sponsored conferences
\$140	Out-of-state and New Orleans for non-state sponsored conferences
\$165	New York City
The inclusion of suburbs shall be determined by the department head on a case-by-case basis	

2. State Sponsored Conferences. An agency must solicit three competitive quotes in accordance with the Governor's Executive Order for Small Purchase.

3. No reimbursements are allowed for functions not relating to a conference, i.e., tours, dances, golf tournaments, etc.

G. Extended Stays. For travel assignment involving duty for extended periods (31 or more consecutive days) at a fixed location, the reimbursement rates indicated should be adjusted downward whenever possible. Claims for meals and lodging may be reported on a per diem basis supported by lodging receipt. Care should be exercised to prevent allowing rates in excess of those required to meet the necessary authorized subsistence expenses. It is the responsibility of each agency head to authorize only such travel allowances as are justified by the circumstances affecting the travel.

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**§1506. Parking and Related Parking Expenses**

1. Parking for the Baton Rouge Airport. The state's current contract rate is \$3.50 per day (no receipts required) for parking in the outside, fenced parking lot at the airport. Documentation required to receive the contract price is either a parking coupon or a travel itinerary issued by the state contracted travel agency designating the employee is on "official state business". At the agency discretion an employee may be paid actual expenses up to \$4.75 per day with a receipt.

2. Parking for the New Orleans Airport. The state's current contract rate is \$6 per day and \$36 weekly at Park 'N Fly (no receipts required). Documentation required to receive the contract price is your agency issued photo ID, a business card, state issued corporate card or a travel itinerary issued by the state contracted travel agency designating the employee is on "official state business." At the agency discretion an employee may be paid actual expenses up to \$8 per day with a receipt.

4. Travelers using motor vehicles on official state business will be reimbursed for reasonable storage fees, for all other parking, including airport parking except as listed in Paragraphs 1 and 2 above, ferry fares, and road and bridge tolls. For each transaction over \$5, a receipt is required.

5. Tips for valet parking not to exceed \$1 per in and \$1 per out, per day.

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**§1507. Reimbursement for Other Expenses**

A. The following expenses incidental to travel may be reimbursed.

1. Communications Expenses

a. For Official State BusinessCall costs (receipts required for over \$3).

b. For Domestic Overnight TravelCup to \$3 in personal calls upon arrival at each destination and up to \$3 for personal calls every second night after the first night if the travel extends several days.

c. For International TravelCup to \$10 in personal calls upon arrival at each destination and up to \$10 for personal calls every second night after the first night if the travel extends several days.

d. Internet access charges for official state business from hotels or other travel locations are treated the same as business telephone charges. A department may implement a stricter policy for reimbursement of internet charges.

2. Charges for Storage and Handling of State Equipment

3. Baggage Tips

a. Hotel AllowancesCnot to exceed \$1 per bag for a maximum of three bags. Tips may be paid one time upon each hotel check-in and one time upon each hotel check-out, if applicable.

b. Airport AllowancesCnot to exceed \$1 per bag for a maximum of three bags. Tips may be paid one time for the airport outbound departure trip and one time for the inbound departure trip.

4 Registration Fees at Conferences (meals that are a designated integral part of the conference may be reimbursed on an actual expense basis with prior approval by the department head).

5. Laundry Services. Employees on travel for more than seven days up to 14 days are eligible for \$20 of laundry services, and for more than 14 days up to 21 days an additional \$20 of laundry services, and so on. Receipts are required for reimbursement.

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### **§1508. Special Meals**

A. Reimbursement designed for those occasions when, as a matter of extraordinary courtesy or necessity, it is appropriate and in the best interest of the state to use public funds for provision of a meal to a person who is not otherwise eligible for such reimbursement and where reimbursement is not available from another source.

1. Visiting dignitaries or executive-level persons from other governmental units, and persons providing identified gratuity services to the state. This explicitly does not include normal visits, meetings, reviews, etc., by federal or local representatives.

2. Extraordinary situations are when state employees are required by their supervisor to work more than a 12-hour weekday or six-hour weekend (when such are not normal working hours to meet crucial deadlines or to handle emergencies).

B. All special meals must have prior approval from the commissioner of administration in order to be reimbursed,

unless specific authority for approval has been delegated to a department head for a period not to exceed one fiscal year with the exception in C, as follows.

C. A department head may authorize a special meal within allowable rates to be served in conjunction with a working meeting of departmental staff.

D. In such cases, the department will report on a semi-annual basis to the commissioner of administration all special meal reimbursements made during the previous six months. These reports must include, for each special meal, the name and title of the person receiving reimbursement, the name and title of each recipient, the cost of each meal and an explanation as to why the meal was in the best interest of the state. Renewal of such delegation will depend upon a review of all special meals authorized and paid during the period. Request to the commissioner for special meal authorization must include, under signature of the department head:

1. name and position/title of the state officer or employee requesting authority to incur expenses and assuming responsibility for such;

2. clear justification of the necessity and appropriateness of the request;

3. names, official titles or affiliations of all persons for whom reimbursement of meal expenses is being requested;

4. statement that allowances for meal reimbursement according to these regulations will be followed unless specific approval is received from the commissioner of administration to exceed this reimbursement limitation.

E. All of the following must be reviewed and approved by the department head or their designee prior to reimbursement:

1. detailed breakdown of all expenses incurred, with appropriate receipts(s);

2. subtraction of cost of any alcoholic beverages;

3. copy of prior written approval from the commissioner of administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 29:829 (June 2003).

### **§1509. International Travel**

A. All international travel must be approved by the commissioner of administration prior to departure, unless specific authority for approval has been delegated to a department head. Requests for approval must be accompanied by a detailed account of expected expenditures (such as room rate/date, meals, local transportation, etc.), the funding source from which reimbursement will be made, and an assessment of the adequacy of this source to meet such expenditures without curtailing subsequent travel plans.

B. International travelers will be reimbursed the high cost area rates for lodging and meals, unless U.S. State Department rates are requested and authorized by the commissioner of administration prior to departure. Receipts are required for reimbursement of meals and lodging claimed at the U.S. State Department rates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 29:829 (June 2003).

**§1510. Waivers**

A. The commissioner of administration may waive in writing any provision in these regulations when the best interest of the state will be served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1259 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 29:829 (June 2003).

Mark C. Drennen  
Commissioner

0306#011

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of the Commissioner

Chloramphenicol in Shrimp and Crawfish Testing and Sale  
(LAC 7:XXXV.137 and 139)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rules governing the testing and sale of shrimp and crawfish in Louisiana and the labeling of foreign shrimp and crawfish. These Rules are being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the Emergency Rule provisions of R.S. 49:953.B of the Administrative Procedure Act.

The Louisiana Legislature, by SCR 13 of the 2002 Regular Session, has urged and requested that the Commissioner of Agriculture and Forestry require all shrimp and crawfish, prior to sale in Louisiana, meet standards relating to chloramphenicol that are consistent with those standards promulgated by the United States Food and Drug Administration, (FDA). The legislature has also urged and requested the commissioner to promulgate Rules and regulations necessary to implement the standards relating to chloramphenicol in shrimp and crawfish that are consistent with those standards promulgated by the FDA, and which Rules and regulations require all shrimp and crawfish sold in Louisiana to meet the standards adopted by the commissioner, prior to sale.

Chloramphenicol is an antibiotic the FDA has restricted for use in humans only in those cases where other antibiotics or medicines have not been successful. The FDA has banned the use of chloramphenicol in animals raised for food production [see, 21 CFR 522.390(3)]. The FDA has set a zero tolerance level for chloramphenicol in food.

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, European Union inspectors found chloramphenicol residues in shrimp and crawfish harvested from and produced in China. The inspectors also found "serious deficiencies of the Chinese residue control system and problems related to the use of banned substances in the veterinary field," which may contribute to chloramphenicol residues in Chinese shrimp and crawfish. The Chinese are known to use antibiotics, such as chloramphenicol, in farm-raised shrimp. They are also known to process crawfish and shrimp harvested in the wild in the same plants used to process farm-raised shrimp.

The European Union, in January of this year, banned the import of shrimp and crawfish from China because chloramphenicol has been found in shrimp and crawfish imported from China. Canada has, this year, banned the import of shrimp and crawfish that contain levels of chloramphenicol above the level established by Canada. Between 1999 and 2000, imports of Chinese Shrimp to the United States doubled, from 19,502,000 pounds to 40,130,000 pounds. With the recent bans imposed by the European Union and Canada there is an imminent danger that the shrimp and crawfish that China would normally export to the European Union and Canada will be dumped and sold in the United States, including Louisiana.

The sale of such shrimp and crawfish in Louisiana will expose Louisiana's citizens, including unborn children and nursing infants, to chloramphenicol, a known health hazard. The sale, in Louisiana, of shrimp and crawfish containing chloramphenicol presents an imminent peril to the public's health, safety and welfare.

This peril can cause consumers to quit buying shrimp and crawfish from any source, including Louisiana shrimp and crawfish. If consumers cease to buy, or substantially reduce, their purchases of Louisiana shrimp and seafood, Louisiana aquaculture and fisheries will be faced with substantial economic losses. Any economic losses suffered by Louisiana's aquaculture and fisheries will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

Consumers of shrimp and crawfish cannot make an informed decision as to what shrimp or crawfish to purchase and the commissioner cannot adequately enforce the regulations regarding the sampling and testing of shrimp and crawfish unless shrimp and crawfish produced in foreign countries are properly labeled as to the country of origin.

The Commissioner of Agriculture and Forestry has, therefore, determined that these Emergency Rules are necessary to immediately implement testing of shrimp and crawfish for chloramphenicol, to provide for the sale of shrimp and crawfish that are not contaminated with chloramphenicol and to provide for the labeling of shrimp and crawfish harvested from or produced, processed or packed in countries other than the United States. These Rules become effective upon signature, May 22, 2003, and will remain in effect 120 days, unless renewed by the commissioner or until permanent Rules are promulgated.



**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXXV. Agro-Consumer Services**

**Chapter 1. Weights and Measures**

**§137. Chloramphenicol in Shrimp and Crawfish Prohibited; Testing and Sale of**

**A. Definitions**

*Food Producing Animals*—both animals that are produced or used for food and animals, such as dairy cows, that produce material used as food.

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

*Packaged Shrimp or Crawfish*—any shrimp or crawfish, as defined herein, that is in a package, can, or other container, and which is intended to eventually be sold to the ultimate retail purchaser in the package, can or container.

*Shrimp or Crawfish*—any such animals, whether whole, de-headed, de-veined or peeled, and any product containing any shrimp or crawfish.

B. No shrimp or crawfish may be held, offered or exposed for sale, or sold in Louisiana if such shrimp or crawfish contain chloramphenicol.

C. No shrimp or crawfish may be held, offered or exposed for sale, or sold in Louisiana without being accompanied by the following records and information, written in English.

1. The records and information required are:
  - a. the quantity and species of shrimp and crawfish acquired or sold;
  - b. the date the shrimp or crawfish was acquired or sold;
  - c. the name and license number of the wholesale/retail seafood dealer or the out-of-state seller from whom the shrimp or crawfish was acquired or sold;
  - d. the geographic area where the shrimp or crawfish was harvested;
  - e. the geographic area where the shrimp or crawfish was produced processed or packed;
  - f. the trade or brand name under which the shrimp or crawfish is held, offered or exposed for sale or sold; and
  - g. the size of the packaging of the packaged shrimp or crawfish.

2. Any person maintaining records and information as required to be kept by the Louisiana Department of Wildlife and Fisheries in accordance with R.S. 56:306.5, may submit a copy of those records, along with any additional information requested herein, with the shrimp or crawfish.

3. Any shrimp or crawfish not accompanied by all of this information shall be subject to the issuance of a stop-sale, hold or removal order until the shrimp or crawfish is tested for and shown to be clear of chloramphenicol, or the commissioner determines that the shrimp or crawfish does not come from a geographic area where chloramphenicol is being used on or found in food producing animals, or in products from such animals.

D. No shrimp or crawfish that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where chloramphenicol is being used on or found in food producing animals, or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection F.

E. The commissioner may declare a geographic area to be a location where chloramphenicol is being used on or found in food producing animals, or in products from such animals, based upon information that would lead a reasonable person to believe that chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

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

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

F. Shrimp or crawfish, that comes from a geographic area declared by the commissioner to be a location where chloramphenicol is being used on, or is found in food producing animals, or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

**1. Sampling**

a. The numbers of samples that shall be taken are as follows:

- i. two samples are to be taken of shrimp or crawfish that are in lots of 50 pounds or less;
- ii. four samples are to be taken of shrimp or crawfish that are in lots of 51 to 100 pounds;
- iii. twelve samples are to be taken of shrimp or crawfish that are in lots of 101 pounds up to 50 tons;
- iv. twelve samples for each 50 tons are to be taken of shrimp or crawfish that are in lots of over fifty tons.

b. For packaged shrimp or crawfish, each sample shall be at least eight ounces, (226.79 grams), in size and shall be taken at random throughout each lot of shrimp or crawfish. For all other shrimp or crawfish, obtain approximately one pound (454 grams), of shrimp or crawfish per sample from randomly selected areas.

c. If the shrimp or crawfish to be sampled consists of packages of shrimp or crawfish grouped together, but labeled under two or more trade or brand names, then the shrimp or crawfish packaged under each trade or brand name shall be sampled separately. If the shrimp or crawfish to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

d. A composite of the samples shall not be made. Each sample shall be tested individually. Each sample shall be clearly identifiable as belonging to a specific group of shrimp or crawfish. All samples shall be kept frozen and delivered to the lab.

**2. Each sample shall be identified as follows:**

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

3. Sample Preparation. For small packages of shrimp or crawfish up to and including one pound, use the entire sample. Shell the shrimp or crawfish, exercising care to exclude all shells from sample. Grind sample with food processor type blender while semi-frozen or with dry ice. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion (1 ppb), or less. Acceptable test kits include r-iopharm ridascreen chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results 1 ppb or above must be assumed to be chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

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

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

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

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

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

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

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

9. A copy of the test results, including the test reference number, shall either accompany every shipment

and be attached to the documentation submitted with every shipment of such shrimp or crawfish sent to each location in Louisiana or shall be immediately accessible to the department, upon request, from any such location.

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

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

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

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

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

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

M. The commissioner declares that he has information that would lead a reasonable person to believe that chloramphenicol is being used on or found in food producing animals, or in products from such animals, in the following geographic area(s).

1. The geographic area or areas are:

a. the country of the People's Republic of China.

2. All shrimp and crawfish harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

N. The records and information required under this Section shall be maintained for two years and shall be open to inspection by the department.

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

P. The effective date of this Section is May 24, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3 & 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture & Forestry, Office of the Commissioner, LR 29:

**§139. Labeling of Foreign Shrimp and Crawfish by Country of Origin**

**A. Definitions**

*Foreign Shrimp or Crawfish* Any shrimp or crawfish, as defined herein that is harvested from or produced, processed or packed in a country other than the United States.

*Shrimp or Crawfish* Any shrimp or crawfish, whether whole, de-headed, de-veined or peeled, and any product containing any shrimp or crawfish.

B. All foreign shrimp or crawfish, imported, shipped or brought into Louisiana shall indicate the country of origin, except as otherwise provided in this Section.

C. Every package or container that contains foreign shrimp or crawfish, shall be marked or labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of the package or container will permit so as to indicate to the ultimate retail purchaser of the shrimp or crawfish the English name of the country of origin.

1. Legibility must be such that the ultimate retail purchaser in the United States is able to find the marking or label easily and read it without strain.

2. Indelibility must be such that the wording will not fade, wash off or otherwise be obliterated by moisture, cold or other adverse factors that such shrimp or crawfish are normally subjected to in storage and transportation.

3. Permanency must be such that, in any reasonably foreseeable circumstance, the marking or label shall remain on the container until it reaches the ultimate retail purchaser unless it is deliberately removed. The marking or label must be capable of surviving normal distribution and storing.

D. When foreign shrimp or crawfish are combined with domestic shrimp or crawfish, or products made from or containing domestic shrimp or crawfish, the marking or label on the container or package or the sign included with any display shall clearly show the country of origin of the foreign shrimp or crawfish.

E. In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, appear on any container or package containing foreign shrimp or crawfish, or any sign advertising such foreign shrimp or crawfish for sale, and those words, letters or names may mislead or deceive the ultimate retail purchaser as to the actual country of origin of the shrimp or crawfish, then the name of the country of origin preceded by "made in," "product of," or other words of similar meaning shall appear on the marking, label or sign. The wording indicating that the shrimp or crawfish is from a country other than the United States shall be placed in close proximity to the words, letters or name that indicates the shrimp or crawfish is a product of the United States in a legible, indelible and permanent manner. No provision of this Section is intended to or is to be construed as authorizing the use of the words "United States," or "American," the letters "U.S.A.," any variation of such

words or letters, or the name of any state, city or location in the United States, if such use is deceptive, misleading or prohibited by other federal or state law.

F. Foreign shrimp or crawfish shall not have to be marked or labeled with the country of origin if such shrimp or crawfish are included as components in a product manufactured in the United States and the shrimp or crawfish is substantially transformed in the manufacturing of the final product. But in no event shall thawing, freezing, packing, packaging, re-packing, re-packaging, adding water, de-heading, de-veining, peeling, partially cooking or combining with domestic shrimp or crawfish shall not be considered to be a substantial transformation.

G. The commissioner shall have all the powers granted to him by law, or in accordance with any cooperative endeavor with any other public agency, to enforce this Section, including the issuance of stop-sale, hold or removal orders and the seizing of shrimp or crawfish mislabeled or misbranded as to the country of origin.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3 & 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture & Forestry, Office of the Commissioner, LR 29:

Bob Odom  
Commissioner

0306#004

**DECLARATION OF EMERGENCY**

**Department of Economic Development  
Office of Business Development**

Louisiana Economic Development  
Corporation University Foundation Investment Program  
(LAC 19:VII.Chapter 27)

The Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:9536(B), adopts the following Emergency Rule implementing the University Foundation Investment Program as authorized by R.S. 51:2312(A)(2), (D)(1), and (D)(3). This Emergency Rule is adopted June 5, 2003 in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective June 5, 2003 and shall remain in effect for the maximum period allowed under the Act or until adoption of a permanent Rule, whichever occurs first.

The Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation has found an immediate need to promote and enhance Louisiana Department of Economic Development's cluster development, the goals of Vision 20/20, Louisiana's long-term plan for economic development, and related public policy for the university systems of Louisiana to transfer technologies developed in the research universities in order to build Louisiana businesses and commercialize these technologies. This Rule is being adopted to take advantage of imminent opportunities to commercialize, within Louisiana, technology that has been developed by

Louisiana Universities. Without the emergency adoption of this Rule, those technologies may be exported out of Louisiana for development. If the commercialization of such technologies are exported, the state will lose crucial opportunities for the development of wealth, production capabilities and quality jobs based upon high technology concepts born in Louisiana universities.

#### **Title 19**

### **CORPORATIONS AND BUSINESS**

#### **Part VII. Economic Development Corporation**

#### **Subpart 2. Louisiana Venture Capital Program**

#### **Chapter 27. University Foundation Investment Program**

##### **§2701. Purpose**

A. The purpose of this program is to promote and enhance Louisiana Department of Economic Development's cluster development, the goals of Vision 20/20, Louisiana's long-term plan for economic development, and related public policy for the university systems of Louisiana to transfer technologies developed in the research universities in order to build Louisiana businesses and commercialize these technologies. Universities that form technology transfer foundations and/or other vehicles to form seed investment funds need commitments of funding or funding to start-up these seed funds. The intent of this program is to provide initial funding for university-formed seed fund investments that include sound business plans and private, independent management that is attractive to experienced institutional and private investors in keeping with traditional venture capital fund structures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(2), (B), (D)(1), and (D)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Louisiana Economic Development Corporation, LR 29:

##### **§2703. Definitions**

*Applicant* C the University Research and Technology Foundation and its subsidiary entity requesting the funding from the Louisiana University Foundation Investment Program for seed funds that provide early stage funding for the statewide development of University research based companies that seek to commercialize the results of their work through technology transfer in accordance with sound business strategies. In order to be eligible for this program, the applicant must provide a program for engagement of all research universities in the state. The program must indicate that it is seeking inclusion and coordination of effort on a statewide basis and is proceeding in accordance with a sound business plan in a manner consistent with the Rules hereinafter provided.

*Award* C the funding of the project by the LEDC under this program to eligible applicants.

*LEDC Board* C the Board of Directors of the Louisiana Economic Development Corporation and when referred to herein in terms of approval of an award, shall mean that the award has been approved in accordance with the by-laws and procedures of the Board of Directors whether such approval requires or does not require board approval under those by-laws and procedures.

*Agreement* C the funding agreement of contract hereinafter referred to between DED, LEDC, and applicant through which the parties by cooperative endeavor or otherwise,

include appropriate documentation necessary to conventionally protect the interest of the LEDC in the funding of the award, and set forth the terms, conditions and performance objectives of the award provided pursuant to these Rules.

*LEDC* the Louisiana Department of Economic Development charged by statute with administering the Louisiana University Foundation Investment Program and the relevant LED Cluster and Service Directors and assigned staff shall administer the program provided for by these Rules.

*Secretary* C the Secretary of the LED, who is also the President of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(2), (B), (D)(1), and (D)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Louisiana Economic Development Corporation, LR 29:

##### **§2705. General Principles**

A. The following general principles will direct the administration of the Louisiana Project Equity Fund.

1. Awards are not to be construed as an entitlement for Louisiana University Foundations or their subsidiary entities locating and are subject to the discretion of the LED, the Secretary of the LED and the LEDC.

2. An award must reasonably be expected to be a significant factor in improving or enhancing economic development, including cluster development, whether in a particular circumstance, or overall.

3. Awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities.

4. The anticipated economic benefits to the state will be considered in making the award.

5. Whether or not an award will be made is entirely at the discretion of the LED, its cluster and service directors, the secretary and the LEDC Board and shall depend upon the facts and circumstances of each case, funds available, funds already allocated, and other such factors as the board may, in its discretion deem to be pertinent. The grant or rejection of an application for an award shall not establish any precedent and shall not bind the LED, its cluster directors, the secretary, or the LEDC Board to any future course of action with respect to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(2), (B), (D)(1), and (D)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Louisiana Economic Development Corporation, LR 29:

##### **§2707. Eligibility**

A. In order to be eligible for an award pursuant to this program, the applicant and company must demonstrate to the satisfaction of the board that the award sought must be consistent with the provisions set forth above, and the applicant and company must demonstrate a need for the award consistent with the requirements set forth below. Where it is represented that certain contingent actions will be taken in order to comply with these conditions, then the LEDC may, upon recommendation of the LED and its Contract Monitor, withhold funding until there is substantial performance of the contingencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(2), (B), (D)(1), and (D)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Louisiana Economic Development Corporation, LR 29:

**§2709. Qualification for an Award**

A. Applications for awards may be made in phases that are representative of the applicant's overall business plan and design. The application shall state whether or not funds are sought for a phase of operation, or whether it represents the total amount sought by the applicant from the fund.

B. Each application must set forth the following:

1. the establishment or plan for establishment of the subsidiary investment entity;

2. the hiring or plan for hiring, including qualifications, of the chief executive officer of the subsidiary entity;

3. the establishment or plan for establishment of an investment advisory board, including qualifications of its members and scope of its authority;

4. the hiring or plan for hiring, including qualifications of an investment fund manager;

5. a preliminary business plan for the subsidiary entity, including therein a plan for statewide inclusion and coordination of the economic development of technology transfer initiatives;

6. the amount of funding being sought by the applicant, and if phased, the total amount of funding that the applicant anticipates will be sought;

7. the goals and objectives of the funding, and the performance measures to be met by the applicant in order to obtain the funding.

C. Depending upon the nature of the funding being sought, applications for funding shall include goals, objectives and performance measures that to the satisfaction of the department and the LEDC, provide for the following:

1. the amount of funding being sought by the applicant;

2. the business plan of the applicant and the relationship between the funding sought and the plan;

3. the minimum and maximum total amount of capital to be raised including the commitment by the state as evidenced by the funding for which the application is being made and a timetable for raising funds and including goals and objectives for funding and milestones for completion of raising capital;

4. the plan for cluster development, proposed markets for the use of the funds sought, the industry and business development sought by the fund and any new areas for development of the funding; specific involvement of the appropriate department cluster directors in the formation of the plan is recommended;

5. the plan for technology commercialization and transfer and/or the commercialization and transfer of other University based research that will be implemented through use of the funds;

6. the proposed market of the applicant including the types of businesses that the fund will finance, the extent to which the fund intends to specialize in certain industries, or if special circumstances will be addressed;

7. a survey of the possible avenues of rural development; actual and potential uses of the fund in

enhancing the quality of life in the areas of the state most affected by poverty;

8. financing instruments that are intended to be utilized for investments, e.g., debentures, notes, preferred stock, royalties, etc., and a plan reflecting flexibility and adjustment to economic opportunity that may arise from the use of the funds;

9. whether applicant anticipates taking in all of the committed capital investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of capital raised;

10. applicant's plans for the fund to provide management and/or technical assistance to companies for which the fund provides financing;

11. plans and procedures for monitoring its financing, and enforcing provisions of loan or investment agreements and the handling of problem loans and investments;

12. plans for the management of any idle funds, long-term plans and strategies for providing a tangible return to the investors, and relevant tax and accounting issues for the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(2), (B), (D)(1), and (D)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Louisiana Economic Development Corporation, LR 29:

**§2711. LEDC Investment Criteria**

A. In considering applicant's application for funding, LEDC may require, but not be limited to the following considerations:

1. that the secretary or his designee sits upon the Foundation's Board of Directors; and that another representative of the department, designated by the LEDC, sit upon the Board of Investment Advisors;

2. that LEDC's funding be accompanied by other investment; and that future funding be conditioned upon the ability of the applicant to attract other investment and that applicant provide a specific business plan and time table for raising those funds;

3. that LEDC's funds shall be considered equity in the fund with any funds that were used for initial expenses to be counted as equity for carry and distribution purposes;

4. that LEDC shall participate in the distributions in its pro-rate share;

5. that if there are any other investors that receive state tax credits, then LEDC's return on investment shall be calculated on an equal basis;

6. that the professional fund manager or the chief executive officer of the applicant provide the LEDC Board with semi-annual reports detailing the investments made, return on investment, and the applicant's meeting of the goals and objectives and performance measures under which the application was approved;

7. that LEDC may condition the applicant's use of investment capital as up-front operating funding upon submission of a quarterly accounting for the use of funds and a quarterly budget. Additionally, applicant may be required to submit quarterly and annual financial and narrative reports on the use of monies and all investments

made by the fund during the reporting period. The narrative report shall include the number of applications received in addition to other activities. The narrative report shall include a listing of all investors in each business and all subsequent financings. Additionally, the reports shall contain information on the number of jobs created by the portfolio business, the payroll figures, the amount of any state tax incentive or other incentives utilized, and state taxes paid by the businesses;

8. that LEDC may condition applicant's funding as may be appropriate and may require such securitization or other documentation as may be appropriate to the investment goals and objectives and performance measures;

9. that LEDC may condition investment upon performance of such additional requirements as may be negotiated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(2), (B), (D)(1), and (D)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Louisiana Economic Development Corporation, LR 29:

#### **§2713. Contract Between LEDC and Applicant**

A. LEDC and applicant shall enter into such terms of agreement as may be customary in the industry for the creation and maintenance of venture capital funding, provided that the agreement shall fully reflect the representations made by applicant as provided in qualification for award and investment criteria as set forth above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(2), (B), (D)(1), and (D)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Louisiana Economic Development Corporation, LR 29:

Don J. Hutchinson  
Secretary

0306#033

### **DECLARATION OF EMERGENCY**

**Office of the Governor  
Division of Administration  
Office of Group Benefits**

EPO Plan of BenefitsC Employer Responsibility  
(LAC 32:V.417)

Pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB, hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

OGB finds that it is necessary to revise and amend provisions of the EPO Plan Document relative to employer responsibility with respect to re-employed retirees. This action is necessary to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active

employment. Accordingly, the following Emergency Rule, revising and amending the EPO Plan of Benefits, is effective June 29, 2003, and shall remain in effect for a maximum of 120 days, or until the final Rule is promulgated, which ever occurs first.

### **Title 32**

### **EMPLOYEE BENEFITS**

#### **Part V. Exclusive Provider (EPO) Plan of Benefits**

#### **Chapter 4. Uniform Provisions**

#### **§417. Employer Responsibility**

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A *participant employer* shall immediately inform the OGB Program whenever a retiree with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any participant employer that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB, then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1837 (October 1999), amended LR 29:

A. Kip Wall  
Chief Executive Officer

0306#041

### **DECLARATION OF EMERGENCY**

**Office of the Governor  
Division of Administration  
Office of Group Benefits**

PPO Plan of BenefitsC Employer Responsibility  
(LAC 32:III.417)

Pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of

benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB, hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

OGB finds that it is necessary to revise and amend provisions of the PPO Plan Document relative to employer responsibility with respect to re-employed retirees. This action is necessary to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active employment. Accordingly, the following Emergency Rule, revising and amending the PPO Plan of Benefits, is effective June 29, 2003, and shall remain in effect for a maximum of 120 days, or until the final Rule is promulgated, which ever occurs first.

**Title 32**  
**EMPLOYEE BENEFITS**

**Part III. Preferred Provider (PPO) Plan of Benefits**

**Chapter 4. Uniform Provisions**

**§417. Employer Responsibility**

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A participant employer shall immediately inform the OGB Program whenever a *retiree* with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any *participant employer* that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB, then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1837 (October 1999), amended LR 29:

A. Kip Wall  
Chief Executive Officer

0306#040

**DECLARATION OF EMERGENCY**

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

Home and Community Based Services Waivers  
New Opportunities Waiver  
(LAC 50:XXI.Chapter 137)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts LAC 50.XXI.Subpart 11 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 1147 of the 2001 Regular Session of the Louisiana Legislature created the Disability Services and Supports System Planning Group composed of representatives from groups including, but not limited to, individuals with disabilities, developmental disabilities and mental illness. The mission of the planning group is to consider and propose provisions for comprehensive efforts to enhance Louisiana's long term care system which include informed choice and quality supports for individuals of all ages with disabilities. Based on recommendations made by the planning group and a stakeholder task force, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to implement a new home and community based services waiver designed to enhance the support services available to individuals with developmental disabilities. This new home and community based services waiver shall be titled the New Opportunities Waiver.

This action is being taken to promote the health and welfare of those individuals with developmental disabilities or mental retardation who are in need of such services and are on a request for services registry. It is estimated that implementation of this Emergency Rule will increase program expenditures by approximately \$54,357,522 for state fiscal year 2003-2004.

Effective for dates of service on and after July 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following provisions governing the establishment of the New Opportunities Waiver in accordance with Section 1915(c) of the Social Security Act and the approved waiver application document and attachments.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXI. Home and Community Based**  
**Services Waivers**

**Subpart 11. New Opportunities Waiver**

**Chapter 137. General Provisions**

**§13701. Introduction**

A. The New Opportunities Waiver (NOW), hereafter referred to as NOW, is designed to enhance the long term

services and supports available to individuals with developmental disabilities or mental retardation, who would otherwise require an intermediate care facility for the mentally retarded (ICF-MR) level of care. The mission of NOW is to utilize the principle of self determination and supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, NOW will include a self-directed option. This will allow for greater flexibility in hiring, firing, training, and general service delivery issues. NOW will replace the current Mentally Retarded/Developmentally Disabled (MR/DD) waiver after recipients of that waiver have been transitioned into NOW.

B. All NOW recipient's services are accessed through the case management agency of the recipient's choice. All services must be prior authorized and delivered in accordance with the Bureau of Community Supports and Services (BCSS) approved comprehensive plan of care (CPOC). The CPOC shall be developed using a person-centered process coordinated by the individual's case manager.

C. Providers must maintain adequate documentation to support service delivery and compliance with the approved plan of care and will provide said documentation at the request of BCSS.

D. In order for the NOW provider to bill for services, the individual and the direct service provider, professional or other practitioner rendering service must be present at the time the service is rendered. The service must be documented in service notes describing the source rendered and progress towards the recipient's personal outcomes and CPOC.

E. NOW services shall not be provided for or billed for the same hours on the same day as any other NOW service except for Substitute Family, Residential Habilitation and Skilled Nursing services.

F. The average recipient expenditures for all waiver services shall not exceed the average Medicaid expenditures for ICF-MR services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### **§13703. Recipient Qualifications**

A. In order to qualify for NOW, an individual must be three years of age or older, offered a waiver opportunity (slot) and meet all of the following:

1. meet the definitions for mental retardation or developmentally disability as specified in R.S. 28:380;
2. be on the Mentally Retarded/Developmentally Disabled (MR/DD) Request for Services Registry (RFSR);
3. meet the financial eligibility requirements for the Medicaid Program;
4. meet the medical certification eligibility requirements for an ICF-MR level of care and meet the health and welfare assurance requirements;
5. be a resident of Louisiana; and
6. be a citizen of the United States or a qualified alien.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### **Chapter 139. Covered Services**

#### **§13901. Individualized and Family Support Services**

A. Individualized and Family Support (IFS) are direct support and assistance services provided in the home or the community that allow the recipient to achieve and/or maintain increased independence, productivity, enhanced family functioning and inclusion in the community or for the relief of the primary caregiver. Transportation is included in the reimbursement for these services. Reimbursement for these services include the development of a service plan for the provision of these services, based on the BCSS approved CPOC.

1. IFS-Day (IFS-D) services will be authorized during waking hours for up to 16 hours when natural supports are unavailable in order to provide continuity of services to the recipient. Waking hours are the period of time when the recipient is awake and not limited to traditional daytime hours.

2. IFS-Night (IFS-N) services are direct support and assistance provided to individuals during sleeping hours for up to eight hours. The IFS-N worker must be immediately available and in the same residence and able to respond. Night hours are the period of time when the recipient is asleep and not limited to traditional nighttime hours.

B. IFS services may be shared by related waiver recipients who live together or up to three unrelated waiver recipients who live together. Waiver recipients may share IFS services staff when agreed to by the recipients and health and welfare can be assured for each individual. When recipients share supports, this is known as shared support services, both day and night.

C. IFS (day or night) services include:

1. assisting and prompting with the following activities of daily living (ADL):

- a. personal hygiene;
- b. dressing;
- c. bathing;
- d. grooming;
- e. eating;
- f. toileting;
- g. ambulation or transfers;
- h. other personal care and behavioral support needs;

and

i. any medical task which can be delegated.

2. assisting and/or training in the performance of tasks related to maintaining a safe, healthy and stable home, such as:

- a. housekeeping;
- b. laundry;
- c. cooking;
- d. evacuating the home in emergency situations;
- e. shopping; and
- f. money management.

3. personal support and assistance in participating in community, health, and leisure activities;

4. support and assistance in developing relationships with neighbors and others in the community and in strengthening existing informal social networks and natural supports;



5. enabling and promoting individualized community supports targeted toward inclusion into meaningful integrated experiences; and

6. providing orientation and information to acute hospital nursing staff concerning the recipient's specific ADLs, communication, positioning and behavioral needs.

D. Exclusions. The following exclusions apply to IFS services.

1. Reimbursement shall not be paid for services furnished by a legally responsible relative. A legally responsible relative is defined as the natural parent, foster parent, adoptive parent, stepparent or legal guardian of a minor child or the recipient's spouse.

2. Family members shall not serve as the IFS-D or IFS-N worker in Supported Independent Living, regardless of the degree of relationship.

3. In compliance with licensing regulations, IFS-D and IFS-N services shall not include services provided in the IFS-D or IFS-N worker's residence, regardless of the relationship, unless the worker's residence is a certified foster care home.

E. Staffing Criteria and Limitations

1. IFS-D or IFS-N services may be provided by a member of the recipient's family, except for Supervised Independent Living services, provided that the recipient does not live in the family member's residence and the family member is not the legally responsible relative.

2. Family members who provide IFS services must meet the same standards as providers or direct care staff who are unrelated to the individual.

3. An IFS-D worker shall not work more than 16 hours in a 24-hour period unless there is a documented emergency. An IFS-D shared supports worker shall not work more than 16 hours in a 24-hour period.

4. An IFS-N worker or an IFS-N shared supports worker shall not work more than eight hours in a 24-hour period.

5. The IFS-N worker shall not be the same person as the IFS-D worker in a 24-hour period.

F. Place of Service

1. IFS services shall be provided in the State of Louisiana. Consideration shall be given to requests for the provision of IFS services outside the state on a case-by-case basis for time-limited periods or emergencies.

2. IFS services shall not be authorized for provision outside of the continental United States.

G. Provider Requirements. Providers must possess a current, valid license as a Personal Care Attendant agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

#### **§13903. Center-Based Respite Care**

A. Center-Based Respite (CBR) Care is temporary, short-term care provided to a recipient with mentally retarded or developmental disabilities who requires support and/or supervision in his/her day-to-day life due to the absence or relief of the primary caregiver. While receiving center-based respite care, the recipient's routine is maintained in order to attend school, work or other community activities/outings. The respite center is

responsible for providing transportation for community outings, as that is included as part of their reimbursement.

B. Exclusions. The cost of room and board is not included in the reimbursement paid to the respite center.

C. Service Limits. CBR services shall not to exceed 720 hours per recipient, per CPOC year.

D. Provider Requirements. The provider shall possess a current, valid license as a Respite Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

#### **§13905. Community Integration Development**

A. Community Integration Development (CID) facilitates the development of opportunities to assist recipients in becoming involved in their community through the creation of natural supports. The purpose of CID is to encourage and foster the development of meaningful relationships in the community reflecting the recipient's choices and values. Reimbursement for this service includes the development of a service plan. The recipient must be 18 years of age or older and must be present in order to receive this service. The recipient may share CID services with one other NOW recipient.

B. Transportation costs are included in the reimbursement for CID services.

C. Service Limitations. Services shall not to exceed 60 hours per recipient per CPOC year.

D. Provider Qualifications. The provider must possess a current, valid license as a Supervised Independent Living agency or Personal Care Attendant agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

#### **§13907. Residential Habilitation-Supported Independent Living**

A. Residential Habilitation-Supported Independent Living (SIL) assists the recipient to acquire, improve or maintain those social and adaptive skills necessary to enable an individual to reside in the community and to participate as independently as possible. SIL services include assistance and/or training in the performance of tasks such as personal grooming, housekeeping and money management. Payment for this service includes oversight and administration and the development of service plans for the enhancement of socialization with age-appropriate activities that provide enrichment and may promote wellness. These services also assist the individual in obtaining financial aid, housing, advocacy and self-advocacy training as appropriate, emergency support, trained staff and assisting the recipient in accessing other programs for which he/she qualifies. SIL recipients must be 18 years or older.

B. Place of Service. Services are provided in the recipient's residence and the community. The recipient's residence includes his/her apartment or house, provided that he/she does not live in the residence of any immediate family members. An exception will be considered when the recipient lives in the residence of a spouse or disabled parent, or a parent age 70 or older.

### C. Exclusions

1. Family members may not be SIL providers or SIL workers.

2. SIL shall not include the cost of:

- a. meals or the supplies needed for preparation;
- b. room and board;
- c. home maintenance, or upkeep and improvement;
- d. direct or indirect payment to members of the recipient's family;

e. routine care and supervision which could be expected to be provided by a family or a group home provider; or

f. activities or supervision for which a payment is made by a source other than Medicaid e.g., Office for Citizens with Developmental Disabilities (OCDD), etc.

D. Service Limit. SIL services are limited to one service per day, per CPOC year.

E. Provider Qualifications. The provider must possess a current, valid license for the Independent Living Services module issued by the Department of Social Services, Bureau of Licensing.

### F. Provider Responsibilities

1. Minimum direct services by the SIL agency include three documented contacts per week, with at least one contact being face-to-face in addition to the approved direct support hours.

2. The provider must furnish back up staff that is available on a 24-hour basis.

3. Residential habilitation services shall be coordinated with any services listed in the BCSS approved CPOC, and may serve to reinforce skills or lessons taught in school, therapy or other settings.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### §13909. Substitute Family Care

A. Substitute Family Care (SFC) provides for day programming, transportation, independent living training, community integration, homemaker, chore, attendant care and companion services, and medication oversight (to the extent permitted under state law) to recipients residing in a licensed substitute family care home. The service is a stand-alone family living arrangement for individuals age 18 and older. The SFC house parents assume the direct responsibility for the individual's physical, social, and emotional well-being and growth, including family ties. Immediate family members, which include mother, father, brother and sister cannot be substitute family care parents. Reimbursement for this service includes the development of a service plan based on the approved CPOC.

B. Service Limits. SFC services are limited to one service per day.

C. Provider Qualifications. The provider must possess a current, valid license as a Substitute Family Care agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### §13911. Day Habilitation

A.1. Day habilitation is assistance with social and adaptive skills necessary to enable the recipient to reside in a community setting and to participate as independently as possible in the community. These services focus on socialization with meaningful age-appropriate activities which provide enrichment and promote wellness, as indicated in the person-centered plan. Day habilitation services must be directed by a service plan and provide assistance and/or training in the performance of tasks related to acquiring, maintaining or improving skills including, but not limited to:

- a. personal grooming;
- b. housekeeping;
- c. laundry;
- d. cooking;
- e. shopping; and
- f. money management.

2. Habilitation services shall be coordinated with any therapy, facility-based employment, employment-related training, or supported employment models that the recipient may be receiving. The recipient does not receive payment for the activities in which they are engaged. The recipient must be 18 years of age or older in order to receive day habilitation services.

B. Service Limits. Services shall not be provided more than six hours per day, five days per week and cannot exceed 6,240 1/4 hour units of service per Comprehensive Plan of Care (CPOC) year.

C. Licensing Requirements. The provider must possess a current, valid license as an Adult Day Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### §13913. Supported Employment

A. Supported employment is competitive work in an integrated work setting, or employment in an integrated work setting in which the individuals are working toward competitive work that is consistent with the strengths, resources, priorities, interests and informed choice of individuals for whom competitive employment has not traditionally occurred. The recipient must be 18 years of age or older in order to receive supported employment services.

B. These are services provided to individuals who are not served by Louisiana Rehabilitation Services, need more intense, long-term follow along and usually cannot be competitively employed because supports cannot be successfully phased out.

C. Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed. Supported employment includes activities needed by waiver recipients to sustain paid work, including supervision and training and is based on an individualized service plan. Supported employment includes assistance and prompting with:

1. personal hygiene;
2. dressing;
3. grooming;
4. eating;

5. toileting;
  6. ambulation or transfers;
  7. other personal care and behavioral support needs;
- and
8. any medical task which can be delegated.

D. Supported Employment Models. Reimbursement for supported employment includes an individualized service plan for each model.

1. A one to one model of supported employment is a placement strategy in which an employment specialist (job coach) places a person into competitive employment, provides training and support and then gradually reduces time and assistance at the work site. This service is time limited to six to eight weeks in duration.

2. Follow along services are designed for individuals who are in supported employment and have been placed in a work site and only require the oversight of a minimum of two visits per month for follow along at the job site.

3. Mobile Work Crew/Enclave is an employment setting in which a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor). Typically, this service is up to eight hours per day, five days per week.

E. Service Exclusions

1. Services shall not be used in conjunction or simultaneously with any other waiver service.

2. When supported employment services are provided at a work site in which persons without disabilities are employees, payment will be made only for the adaptations, supervision and training required by individuals receiving waiver services as a result of their disabilities, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

3. Services are not available to individuals who are eligible to participate in programs funded under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

F. Service Limits

1. One to one intensive services shall not exceed 4,160 1/4 hour units per CPOC year. Services shall be limited to eight hours a day, five days a week, for six to eight weeks.

2. Follow along services shall not exceed 24 days per CPOC year.

3. Mobile Crew/Enclave services shall not exceed 8,320 1/4 hour units of service per CPOC year, without additional documentation. This is six hours per day, five days per week, for 52 weeks.

G. Licensing Requirements. The provider must possess a current, valid license as an Adult Day Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

**§13915. Transportation for Day Habilitation and Supported Employment Models**

A. Transportation provided between the recipient's residence and the site of the day habilitation or supported employment model, or between the day habilitation and

supported employment model site (if the recipient receives services in more than one place) is reimbursable when day habilitation or supported employment model has been provided. Reimbursement will be a daily rate for a round trip fare. Round trip is defined as pickup from the recipient's place of residence and return to the recipient's place of residence.

B. Licensing Requirements. Transportation providers must possess a current, valid license as an Adult Day Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

**§13917. Employment-Related Training**

A. Employment related training consists of paid employment for recipients for whom competitive employment at or above the minimum wage is unlikely, and who need intensive ongoing support to perform in a work setting because of their disabilities. Services are aimed at providing recipients with opportunities for employment and related training in work environments one to eight hours a day, one to five days a week at a commensurate wage in accordance with U.S. Department of Labor regulations and guidelines. The recipient must be 18 years or older in order to receive employment-related training services. Reimbursement for these services includes transportation and requires an individualized service plan.

B. Employment-related training services include, but are not limited to:

1. assistance and prompting in the development of employment related skills. This may include:
  - a. assistance with personal hygiene;
  - b. dressing;
  - c. grooming;
  - d. eating;
  - e. toileting;
  - f. ambulation or transfers;
  - g. behavioral support needs; and
  - h. any medical task which can be delegated;
2. employment at a commensurate wage at a provider facility for a set or variable number of hours;
3. observation of an employee of an area business in order to obtain information to make an informed choice regarding vocational interest;
4. instruction on how to use equipment;
5. instruction on how to observe basic personal safety skills;
6. assistance in planning appropriate meals for lunch while at work;
7. instruction on basic personal finance skills;
8. information and counseling to a recipient and, as appropriate, his/her family on benefits planning and assistance in the process.

C. Exclusions. The following service exclusions apply to employment-related training.

1. Services are not available to recipients who are eligible to participate in programs funded under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

D. Service Limits. Services shall not exceed eight hours a day, five days a week, and cannot exceed 6,240 1/4 hour units of service per CPOC year.

E. Licensing Requirements. The provider must possess a current, valid license as an Adult Day Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

#### **§13919. Environmental Accessibility Adaptations**

A. Environmental accessibility adaptations are physical adaptations to the home or a vehicle that are necessary to ensure the health, welfare and safety of the recipient or that enable him/her to function with greater independence in the home and/or community. Without these services, the recipient would require additional supports or institutionalization.

B. Such adaptations may include the installation of non-portable ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies for the welfare of the individual.

C. Requirements for Authorization. Items reimbursed through NOW funds shall be supplemental to any adaptations furnished under the Medicaid State Plan.

1. Any service covered under the Medicaid State Plan shall not be authorized by NOW. The environmental accessibility adaptation(s) must be delivered, installed, operational and reimbursed in the CPOC year in which it was approved. Three written itemized detailed bids, including drawings with the dimensions of the existing and proposed floor plans relating to the modification, must be obtained and submitted for prior authorization. Modifications may be applied to rental or leased property with the written approval of the landlord. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the recipient.

2. Three bids may not be required if the environmental accessibility adaptations are available from only one supplier due to the distance of the recipient's home from other environmental accessibility adaptations providers. Justification and agreement by the service planning/support team for not providing three bids must be included with any request for prior approval.

3. Excluded are those adaptations or improvements to the residence that are of general utility or maintenance and are not of direct medical or remedial benefit to the individual, including, but not limited to:

- a. air conditioning or heating;
- b. flooring;
- c. roofing, installation or repairs;
- d. smoke and carbon monoxide detectors, sprinklers, fire extinguishers, or hose; or
- e. furniture or appliances.

4. Adaptations which add to the total square footage or add to the total living area under the roof of the residence are excluded from this benefit.

5. Home modification is not intended to cover basic construction cost.

6. Excluded are those vehicle adaptations which are of general utility or for maintenance of the vehicle or repairs to adaptations.

D. Service Limits. There is a cap of \$4,000 per recipient for environmental accessibility adaptations. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the recipient may access another \$4,000. Any additional environmental accessibility expenditures during the dormant period reset the three-year time frame.

E. Provider Qualifications. The provider must comply with applicable state and local laws governing licensure and/or certification. All persons performing the services (building contractors, plumbers, electricians, engineers, etc.) must meet all state or local requirements for licensure or certification. When state and local building or housing code standards are applicable, modifications to the home shall meet such standards.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

#### **§13921. Specialized Medical Equipment and Supplies**

A. Specialized Medical Equipment and Supplies (SMES) are devices, controls or appliances which enable the recipient to:

1. increase his/her ability to perform the activities of daily living;
2. ensure safety; or
3. perceive and control the environment in which he/she lives.

B. The service includes medically necessary durable and nondurable medical equipment not covered under the Medicaid State Plan. NOW shall not be used as a substitute for any medical equipment and will not cover supplies furnished or denied under the Medicaid State Plan. All items shall meet applicable standards of manufacture, design and installation.

C. All alternate funding sources that are available to the recipient shall be pursued before a request for the purchase or lease of specialized equipment and supplies will be considered.

D. Exclusion. Excluded are specialized equipment and supplies that are of general utility or maintenance and are not of direct medical or remedial benefit to the individual. Refer to the New Opportunities Waiver Provider Manual for a list of examples.

E. Service Limitations. There is a cap of \$4,000 per individual for specialized equipment and supplies. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the recipient may access another \$4,000. Any additional specialized equipment and supplies expenditures during the dormant period reset the three year time frame.

F. Provider Qualifications. Providers must be enrolled in the Medicaid Program as a durable medical equipment provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### **§13923. Personal Emergency Response Systems**

A. Personal Emergency Response Systems (PERS) is an electronic device connected to the person's phone and programmed to signal a response center which enables an individual to secure help in an emergency.

B. Recipient Qualifications. Personal emergency response systems (PERS) services are available to those persons who:

1. live alone without the benefit of a natural emergency back-up system;
2. live alone and would otherwise require extensive IFS services or other NOW services;
3. due to cognitive limitations need support until they are educated on the use of PERS;
4. have is a demonstrated need for quick emergency back-up;
5. where older or disabled care givers are involved; or
6. other communications systems are not adequate to summon emergency assistance.

C. Coverage of the PERS is limited to the rental of the electronic device. PERS services shall include the cost of maintenance and training the recipient to use the equipment.

D. Provider Qualifications. The provider must an authorized distributor of the Personal Emergency Response System.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### **§13925. Professional Consultation**

A. Professional Consultation are services designed to evaluate, develop programs, and train natural and formal care givers to implement training or therapy programs, which will increase the individual's independence, participation, and productivity in his/her home, work, and community. These services are not meant to be long-term on-going services. They are normally meant be short-term or intermittent services to develop critical skills which may be self-managed by the individual or maintained by natural and formal care givers. The recipient must be present in all aspects of the consultation in order to for the professional to receive payment for these services. Service intensity, frequency and duration will be determined by individual need. These services may include assessments, periodic reassessments and may be direct or indirect. Documentation of services provided must be available on-site. The professional consultation services are to be used only when the services are not covered under the Medicaid State Plan. The recipients must be 21 years or older in order to receive professional consultation services.

B. Professional consultation shall include the following services:

1. Nursing Consultation. Consultation provided by a licensed registered nurse regarding those medically necessary nursing services ordered by a physician that exceed the service limits for home health services under the Medicaid State Plan. Services must comply with the Louisiana Nurse Practice Act. Consultations may address health care needs related to prevention and primary care activities.

2. Psychological Consultation. Evaluation and education performed by a licensed psychologist as specified

by state law and licensure. These services are for the treatment of behavioral or mental conditions that address personal outcomes and goals desired by the recipient and his/her team. Services must be reasonable and necessary to preserve and improve or maintain adaptive behaviors or decrease maladaptive behaviors of a person with mental retardation or developmental disabilities. Consultation provides the recipient, family, care givers or team with information necessary to plan and implement plans for the recipient.

3. Social Work Consultation. Highly specialized consultation services furnished by a licensed clinical social worker and designed to meet the unique counseling needs of individuals with mental retardation and development disabilities. Counseling may address areas such as human sexuality, depression, anxiety disorders and social skills. Services must only address those personal outcomes and goals listed in the BCSS approved CPOC.

C. Service Limits. Professional consultation services are limited to a \$750 cap per individual per CPOC year for the combined range of professional consultations.

D. Provider Qualifications. The provider of professional consultation services must possess a current, valid license as a personal care attendant (PCA), supervised independent living (SIL) or home health (HH) agency. Each professional rendering services must:

1. possess a current, valid Louisiana license to practice in his/her field;
2. have at least one year experience in his/her filed of expertise; and
3. be contracted or employed with an enrolled PCA, SIL or HH agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### **§13927. Professional Services**

A. Professional services are services designed to increase the individual's independence, participation and productivity in the home, work and community. The recipient must be 21 years of age or older in order to receive these services. Professional services are to be used only when the services are not covered under the Medicaid State Plan. Professional services are limited to the following services. Professional services must be delivered with the recipient present and be provided based on the approved CPOC and an individualized service plan.

1. Psychological services are direct services performed by a licensed psychologist, as specified by state law and licensure. These services are for the treatment of a behavioral or mental condition that addresses personal outcomes and goals desired by the recipient and his or her team. Services must be reasonable and necessary to preserve and improve or maintain adaptive behaviors or decrease maladaptive behaviors of a person with mental retardation or developmental disabilities. Service intensity, frequency and duration will be determined by individual need.

2. Social work services are highly specialized direct counseling services furnished by a licensed clinical social worker and designed to meet the unique counseling needs of individuals with mental retardation and development disabilities. Counseling may address areas such as human

sexuality, depression, anxiety disorders and social skills. Services must only address those personnel outcomes and goals listed in the BCSS approved CPOC.

3. Nursing services are medically necessary direct services provided by a licensed registered nurse or licensed practical nurse. Services must be ordered by a physician and comply with the Louisiana Nurse Practice Act. Direct services may address health care needs related to prevention and primary care activities, treatment and diet. Reimbursement is only available for the direct service performed by a nurse, and not for the supervision of a nurse performing the hands-on direct service.

B. Service Limits. There shall be a \$1,500 cap per recipient per CPOC year for the combined range of professional services.

C. Provider Qualifications. The provider of professional services must possess a current, valid license as a personal care attendant, supervised independent living or home health agency. Each professional rendering services must possess a current, valid Louisiana license to practice in his/her field and have at least one year of experience in their area of expertise and be contracted or employed with an enrolled PCA, SIL or HH agency.

D. Non-reimbursable Activities. The following activities are not reimbursable:

1. friendly visiting, attending meetings;
2. time spent on paperwork or travel;
3. time spent writing reports and progress notes;
4. time spent on staff training;
5. time spent on billing of services;
6. other non-Medicaid reimbursable activities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### **§13929. Skilled Nursing Services**

A. Skilled Nursing services are medically necessary nursing services ordered by a physician and provided to a medically fragile recipient in or outside of his/her home. Skilled nursing services shall be provided by a licensed, enrolled home health agency using licensed nurses. All Medicaid State Plan services must be utilized before accessing this service.

B. Recipient Criteria. The recipient must be 21 years of age or older and have a diagnosis of a chronic disease which requires the vigilance of a licensed nurse to provide prevention, evaluation and management of a disease; thereby limiting the need for frequent acute or emergency services. Skilled nursing services require a physician's order documenting medical necessity and individual nursing service plan. These services must be included in the individual's BCSS approved CPOC. Skilled nursing services shall be available to individuals who are medically fragile with chronic conditions who meet one of the following criteria:

1. have unstable or uncontrolled diabetes and are insulin dependent;
2. have insufficient respiratory capacity requiring use of oxygen therapy, a ventilator and/or tracheotomy;
3. require hydration, nutrition and/or medication via a gastro-tube;

4. have severe musculo-skeletal conditions/non-ambulatory status that requires increased monitoring and/or the treatment of decubitus;

5. have kidney failure requiring dialysis;

6. have cancer requiring radiation/chemotherapy;

7. require end-of-life care not covered by hospice services;

8. require the use of life-sustaining equipment to ensure sufficient body function (a ventilator, a suction machine, pulse oximeters, apnea monitors, or nebulizers); or

9. require the administration of medications which by law must be administered by a licensed nurse via mediports, central lines or intravenous therapy.

C. When there is more than one recipient in the home receiving skilled nursing services, services may be shared and payment must be coordinated with the service authorization system and each recipient's BCSS approved CPOC.

D. Provider Qualifications. The provider must possess a current, valid license as a home health agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### **§13931. One Time Transitional Expenses**

A. One time transitional expenses are those allowable expenses incurred by recipients who are being transitioned from an ICF-MR to their own home or apartment in the community of their choice. Own home shall mean the recipient's own place of residence and does not include any family members home or substitute family care homes. The recipient must be 18 years or older in order to receive this service.

B. Allowable transitional expenses include:

1. the purchase of essential furnishings such as:
  - a. bedroom and living room furniture;
  - b. table and chairs;
  - c. window blinds;
  - d. eating utensils; and
  - e. food preparation items.

2. moving expenses required to occupy and use a community domicile;

3. health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

C. Service Limits. Set-up expenses are capped at \$3,000 over a recipient's lifetime.

D. Service Exclusion. Transitional expenses shall not constitute payment for housing, rent or refundable security deposits.

E. Provider Qualifications. This service shall only be provided by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities (OCDD) with coordination of appropriate entities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

### **§13933. Transitional Professional Support Services**

A. Transitional Professional Support Services is a system using specialized staff and resources to intervene and

stabilize in a situation caused by any severe behavioral or medical circumstance that could result in loss of a current community-based living arrangement. These services are limited to recipients who have transitioned out of a public developmental center and have reached the cap for professional services and professional consultation for the recipient's CPOC year. The recipient must be present for all services provided.

**B. Recipient Criteria**

1. These services are available for recipients who meet all of the following criteria:

a. have a developmental disability and one or more concurrent mental health diagnoses of autism or other pervasive developmental disorders;

b. have a history of recurrent challenging behaviors that risks injury to the individual or others, or results in significant property damage; and

c. have a need for professional services and/or professional consultation that exceeds the service limits for these services available under the Medicaid State Plan and NOW, as documented by a statement of necessity from the treating psychiatrist/psychologist; or

2. the recipient has an acute illness or injury which requires the added vigilance of a licensed nurse to provide treatment of disease symptoms that may avert and/or delay the consequence of advanced complications, thereby reducing the likelihood of further deterioration. Supporting documentation from the recipient's physician must be provided to demonstrate need.

**C. Exclusion.** All Medicaid State Plan services must be utilized before accessing this service.

**D. Provider Qualifications.** Providers of transitional professional support services must possess a current, valid license as a PCA, SIL or HH agency. Each professional rendering service must possess a valid Louisiana license to practice in his/her field and one year experience in their field of expertise.

**E. Provider Responsibility.** An agency that fulfills this role must possess specialized staff and resources to intervene in and stabilize a situation caused by any severe behavioral or medical circumstance that could result in loss of a current community-based living arrangement. The provider must develop and maintain a current service plan that details the program goals, plans, and expected outcomes from all individuals providing these services.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

**§13935. Reimbursement Methodology**

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the recipient. One quarter hour (15 minutes) is the standard unit of service, which covers both service provision and administrative costs.

1. Center-Based Respite
2. Community Integration Development
3. Day Habilitation
4. Employment Related Training
5. Individualized and Family Support-Day and Night
6. Professional Consultation
7. Professional Services

8. Skilled Nursing Services
9. Supported Employment, One to One Intensive and Mobile Crew/Enclave
10. Transitional Professional Support Services
11. Shared Supports (IFS-D and -N, Skilled Nursing, CID)C

a. services furnished to the first recipient will be reimbursed at the full rate;

b. services furnished to the second recipient will be reimbursed at 75 percent of the full rate; and

c. services furnished to the third recipient will be reimbursed at 66 percent of the full rate.

**B.** The following services are to be paid at cost, based on the need of the individual and when the service has been prior authorized and on the CPOC:

1. environmental accessibility adaptations;
2. specialized medical equipment and supplies; and
3. transitional expenses.

**C.** The following services are paid through a per diem:

1. substitute family care;
2. residential habitation-supported independent living; and
3. supported employment-follow along.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Barbara Dodge at the Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood  
Secretary

0306#048

**DECLARATION OF EMERGENCY**

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

**Mentally Retarded/Developmentally Disabled Waiver  
Skilled Nursing Services**

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

Under the provisions of Section 1915(c) of the Social Security Act, states may provide services not generally reimbursable by the Medicaid Program to groups of individuals in the community who meet the qualifications for institutional care. Such programs are known as home and community based services waivers. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in June 1990 establishing the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver and the provisions governing the services covered under the waiver (*Louisiana Register, Volume 16, Number 7*). The MR/DD Waiver is one of the five waivers that are currently administered by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services.

The Bureau of Community Supports and Services has determined that it is necessary to incorporate a new service into the MR/DD Waiver (*Louisiana Register, Volume 28, Number 10*). The Centers for Medicare and Medicaid Services has approved a waiver amendment to add skilled nursing services to the list of services provided under the MR/DD Waiver.

This Emergency Rule is being promulgated to continue the provisions of the November 1, 2002 Rule. This action is being taken to protect the health and welfare of MR/DD Waiver recipients by providing skilled nursing services to those individuals in need of such services.

#### **Emergency Rule**

Effective for dates of service on and after July 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the July 20, 1990 Rule to include skilled nursing services as a service in the Mentally Retarded/Developmentally Disabled Waiver.

#### **Recipient Criteria**

A. Skilled nursing services will be available to medically fragile individuals who meet the following criteria:

1. are ventilator dependent or non-ambulatory, or have undergone a tracheotomy, or gastrostomy; and
2. require life-sustaining equipment (ventilator, suction machines, and/or pulse oximeters, apnea monitors, nebulizers); and
3. are medically approved by their primary physician, as documented by a doctor's order and a letter of medical necessity from the physician.

#### **Provider and Staff Qualifications**

A. A home health agency must enroll as a MR/DD waiver service provider in order to provide skilled nursing services under the MR/DD Waiver.

B. Skilled nursing services shall be provided by either a licensed registered nurse or a licensed practical nurse employed by a Medicaid enrolled home health agency.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is the person responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties

at parish Medicaid offices.

David W. Hood  
Secretary

0306#053

### **DECLARATION OF EMERGENCY**

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

#### **Disproportionate Share Hospital Payment Methodologies (LAC 50:V.Chapter 3)**

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the provisions governing the disproportionate share payment methodologies for hospitals in May of 1999 (*Louisiana Register, Volume 25, Number 5*). The May 20, 1999 Rule was later amended to change the criteria used to define rural hospitals and to clarify the policy governing final payments and adjustments (*Louisiana Register, Volume 29, Number 1*).

The Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 made provisions for public hospitals to receive disproportionate share hospital adjustment payments up to 175 percent of their allowable uncompensated care cost. Act 1024 of the 2001 Regular Session directed the Department of Health and Hospitals, as the federally designated Medicaid state agency, to specify in the Medicaid State Plan how uncompensated care is defined and calculated and to determine what facilities qualify for uncompensated care payments and the amount of the payments. In determining payments, the department shall prioritize local access to primary health care for the medically indigent and uninsured, and shall not include unreimbursed costs resulting from excess inpatient hospital capacity. For the period July 1, 2003 through June 30, 2005, the state's Medicaid uncompensated care payments shall be distributed in proportion to the amount and type of uncompensated care reported by all qualified facilities as required by Senate Bill No. 883 of the 2001 Regular Session. Nothing shall be construed to impede or preclude the Department of Health and Hospitals from implementing the provisions in the Rural Hospital Preservation Act. Further, Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session of the Louisiana Legislature requested the Department of Health and Hospitals, the Louisiana State



University Health Sciences Center-Health Services Division, and the Louisiana State University Health Sciences Center-Shreveport to study and recommend common acute hospital payment methodologies for state and non-state hospitals participating in the Medicaid Program and the Medicaid Disproportionate Share Program. In accordance with the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 and the findings and recommendations contained in the final reports of the study committees, the department proposes to repeal and replace all provisions governing disproportionate share hospital payments. This action is being taken to enhance federal revenue. It is estimated that the implementation of this proposed Rule will increase revenues by approximately \$207,000,000 in federal funds only for state fiscal year 2003-04.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Effective July 1, 2003 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby repeals and replaces all Rules governing disproportionate share hospital payment methodologies.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Medical Assistance Program—Hospital Services**

##### **Subpart 1. Inpatient Hospitals**

#### **Chapter 3. Disproportionate Share Hospital Payment Methodologies**

##### **§301. General Provisions**

A. The reimbursement methodology for inpatient hospital services incorporates a provision for an additional payment adjustment for hospitals serving a disproportionate share of low income patients.

B. The following provisions govern the disproportionate share hospital (DSH) payment methodologies for qualifying hospitals.

1. Total cumulative disproportionate share payments under any and all disproportionate share hospital payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospital's disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

2. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

3. DSH payments to a hospital determined under any of the methodologies described in this Chapter 3 shall not exceed the hospital's net uncompensated cost as defined in §§305-313 or the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable. Public hospitals included in §§305, 307 and 313 shall receive DSH

payments up to 175 percent of the hospital's net uncompensated costs.

4. Qualification is based on the hospital's latest filed cost report as of March 31 of the current state fiscal year and related uncompensated cost data as required by the department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

5. Hospitals and/or units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

##### **§303. Disproportionate Share Hospital Qualifications**

A. In order to qualify as a disproportionate share hospital, a hospital must:

1. have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligible. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician who has staff privileges at the hospital to perform nonemergency obstetric procedures; or

2. treat inpatients who are predominantly individuals under 18 years of age; or

3. be a hospital which did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

4. have a utilization rate in excess of one or more of the following specified minimum utilization rates:

a. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost reporting period. Inpatient days include newborn and psychiatric days and exclude swing bed and skilled nursing days. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

i. the fraction (expressed as a percentage). The numerator is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments. The denominator is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period from the financial statements; and

ii. the fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably attributable to inpatient hospital services. The denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

c. hospitals shall be deemed disproportionate share providers eligible for reimbursement for inpatient services if their inpatient uninsured utilization rates are in excess of 3 percent;

i. inpatient uninsured utilization rate is a fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services furnished to uninsured persons for the period. The denominator is the total amount of the hospital's charges for inpatient services furnished to all persons for the period; or

d. hospitals shall be deemed disproportionate share providers eligible for reimbursement for outpatient services if their outpatient uninsured utilization rates are in excess of 3 percent;

i. outpatient uninsured utilization rate is a fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for outpatient services furnished to uninsured persons for the period. The denominator is the total amount of the hospital's charges for outpatient services furnished to all persons for the period; or

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

6. in addition to the qualification criteria outlined in §303.A.1-5, effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

## §305. High Uninsured Hospitals

### A. Definitions

*High Uninsured Utilization Rate Hospital*Ca hospital that has an uninsured utilization rate in excess of the mean, plus one standard deviation of the uninsured utilization rates for all hospitals.

*Net Uncompensated Cost*Cthe cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an annual attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

C. DSH payments to individual high uninsured hospitals shall be equal to 100 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B. DSH payments to individual public high uninsured hospitals shall be up to 175 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B.

D. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each high uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high uninsured hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §307. Other Uninsured Hospitals

#### A. Definitions

*Net Uncompensated Cost* the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

*Other Uninsured Utilization Rate Hospital* a qualifying hospital that is not included in §§305, 311, 313 or 315.

B. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and
2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:
  - a. patient age;
  - b. family size;
  - c. number of dependent children; and
  - d. household income.

C. DSH payments to an individual other uninsured hospital shall be based on the hospital's uninsured utilization rate and the distribution of all other uninsured hospitals uninsured utilization rates. DSH payments to hospitals in the first quintile of the distribution shall be equal to 25 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B. DSH payments to hospitals in the second through the fifth quintiles of the distribution shall be equal to 40, 55, 70 and 85 percent of the hospital's net uncompensated cost, respectively. DSH payments to individual public other uninsured hospitals shall be up to 175 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B.

D. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each other uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying other uninsured hospitals during the state fiscal year; and then
2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §309. High Medicaid Hospitals

A. Definition. *High Medicaid Utilization Rate Hospital* a hospital that has a Medicaid utilization rate in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments and that is not included in §305.

1. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost-reporting period.

B. DSH payments to individual high Medicaid hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual high Medicaid hospitals shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying high Medicaid hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified high Medicaid hospitals. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; and

2. multiplying by an amount of funds for high Medicaid hospitals to be determined by the director of the Bureau of Health Services Financing.

D. A pro rata decrease necessitated by conditions specified in §301.B. for high Medicaid hospitals will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying high Medicaid hospitals; then
2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §311. Small Rural Hospitals

#### A. Definitions

*Net Uncompensated Cost* the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

*Small Rural Hospital* a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding

psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994, and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a); or

c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly-owned and operated hospital that is located in either a parish with a population of less than 50,000 or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

i. has been in continuous operation since July 1, 1994;

ii. is currently operating under a license issued by the department; and

iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000;

h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a parish with a population of less than 32,000 as measured by the 2000 census.

B. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following two pools.

*Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.1, that are privately owned.

*Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.1, which are owned by a local government.

C. Payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

D. Pro Rata Decrease

1. A pro rata decrease necessitated by conditions specified in §301.B. for rural hospitals described in this §311 will be calculated using the ratio determined by:

a. dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311; then

b. multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

2. No additional payments shall be made after the final payment for the state fiscal year is disbursed by the department. Recoupment shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

E. Qualifying hospitals must meet the definition for a small rural hospital contained in §311.A.1. Qualifying hospitals must maintain a log documenting the provision of uninsured care as directed by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §313. Public State-Operated Hospitals

A. Definitions

*Net Uncompensated Cost*—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

*Public State-Operated Hospital*—a hospital that is owned or operated by the State of Louisiana, Department of Health and Hospitals.

B. DSH payments to individual public state-owned or operated hospitals shall be up to 175 percent of the hospital's net uncompensated costs. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §315. Psychiatric Hospitals

A. Definitions

*Net Uncompensated Cost*—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have

insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

*Psychiatric Hospital*Ca free standing psychiatric hospital that is not included in §313.

B. DSH payments to individual free standing psychiatric hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual free standing psychiatric hospitals shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying free standing psychiatric hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified free standing psychiatric hospitals. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; and

2. multiplying by an amount of funds for free standing psychiatric to be determined by the director of the Bureau of Health Services Financing

D. A pro rata decrease necessitated by conditions specified in §301.B. for hospitals in §315 will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in §315; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

Implementation of the provisions of this Rule will be delayed until July 12, 2003 and shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood  
Secretary

0306#047

## DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment  
Dental ProgramC Reimbursement  
(LAC 50:XV.6903)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.6903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) requires national standards for electronic health care transactions and national identifiers for providers, health plans, and employers (*Federal Register*, Volume 65, Number 160). This includes standardized procedure codes and definitions. The Department of Health and Hospitals, Bureau of Health Services Financing is required to implement these codes and definitions or face monetary sanctions. In compliance with HIPAA requirements, the bureau clarified the descriptions for two Early and Periodic Screening, Diagnosis and Treatment (EPSDT) dental procedure codes and adjusted the reimbursement rates to conform with the HIPAA compliant procedure code descriptions (*Louisiana Register*, Volume 29, Number 2).

This Emergency Rule is promulgated to continue the provisions of the February 21, 2003 Emergency Rule. This action is being taken to avoid federal sanctions by complying with the mandates of the Health Insurance Portability and Accountability Act.

Effective for dates of services on or after June 22, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing clarifies the procedure descriptions and adjusts the reimbursement fees for the following Early and Periodic Screening, Diagnosis and Treatment dental procedure codes.

#### Title 50

#### PUBLIC HEALTH-MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

#### Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

#### Chapter 69. Dental

#### §6903. Reimbursement

A. Reimbursement Fees are adjusted for certain designated procedure codes to the following rates.

Procedure Code	Procedure	Rate
* * *		
[See Prior Text in 00120 - 02931]		
02950	Core Buildup, including any pins	\$55
02954	Prefabricated Post and Core in addition to crown	\$75
* * *		
[See Prior Text in 03220 - 07210]		

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

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

David W. Hood  
Secretary

0306#051

#### DECLARATION OF EMERGENCY

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

Medicaid EligibilityC Qualified Individuals  
Medicare Part B Buy-in

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

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

Federal statutory authority for the payment of Medicare Part B premiums benefits for QIs was originally intended to expire on December 31, 2002. A Continuing Resolution (Public Law No. 107-229, as amended by Public Law Nos. 107-240 and 107-244) was enacted to extend the QI-1 benefits at the current funding levels through January 21,

2003. The bureau promulgated an Emergency Rule to amend the July 20, 1998 Rule by extending the benefits for QI-1s (*Louisiana Register, Volume 28, Number 12*). The Continuing Resolution was again amended by Public Law No. 107-294, extending the QI-1 benefits at the current funding levels through March 12, 2003. The bureau promulgated an Emergency Rule to amend the January 1, 2003 Rule by extending the benefits for QI-1s (*Louisiana Register, Volume 29, Number 1*). Congress has subsequently passed the federal budget for fiscal year 2003 which includes an appropriation to extend the QI-1 benefits at the current funding levels through September 30, 2003. The bureau amended the January 21, 2003 Emergency Rule and again extended coverage of benefits for Qualifying Individuals-1 (*Louisiana Register, Volume 29, Number 3*). This Emergency Rule is being promulgated to continue the provisions of the March 21, 2003 Emergency Rule. This action is being taken to avoid federal sanctions by complying with changes in federal regulations.

#### Emergency Rule

Effective July 20, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the January 21, 2003 Emergency Rule and extends payment of Medicare Part B premiums for Qualifying Individuals-1 through September 30, 2003.

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

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

David W. Hood  
Secretary

0306#052

#### DECLARATION OF EMERGENCY

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

Pharmacy Benefits Management Program  
Prescription Limit

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

Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers the Pharmacy Benefits Management Program under the Medicaid Program in accordance with federal and state regulations which govern Medicaid coverage of prescription drugs. Although federal regulations permit states to establish recipient service limits with a provision for exemption of certain recipient groups, the bureau has not established any limits on the number of prescriptions allowed to Medicaid recipients. In compliance with Executive Order MJF 02-29, the department established a limit of eight prescriptions per calendar month with provisions for exemption of federally mandated eligibles and for the prescriber to override the limit in medically necessary cases (*Louisiana Register, Volume 29, Number 3*).

This Emergency Rule is promulgated to continue the provisions contained in the March 3, 2003 Rule. This action is necessary to avoid a budget deficit in the medical assistance programs.

#### **Emergency Rule**

Effective July 2, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the provision of prescription drug benefits offered to Medicaid recipients under the Medicaid Pharmacy Benefits Management Program.

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

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

- a. persons under 21 years of age;
- b. persons who are residents of long-term care institutions, such as nursing homes and ICF-MR facilities; and
- c. pregnant women.

3. The eight prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates to the pharmacist the following information in his own handwriting or by telephone or other telecommunications device:

- a. "medically necessary override;" and
- b. a valid ICD-9-CM Diagnosis Code that directly relates to each drug prescribed that is over eight. (No ICD-9-CM literal description is acceptable.)

4. The prescriber should use the Clinical Drug Inquiry (CDI). Internet web application developed by Unisys in his/her clinical assessment of the patient's disease state or medical condition and the current drug regime before making a determination that more than eight prescriptions per calendar month is required by the recipient.

5. Printed statements without the prescribing practitioner's signature, check-off boxes or stamped signatures are not acceptable documentation.

6. An acceptable statement and ICD-9-CM are required for each prescription in excess of eight for that month.

7. Pharmacists and prescribers are required to maintain documentation to support the override of a prescription limitation.

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

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

David W. Hood  
Secretary

0306#054

#### **DECLARATION OF EMERGENCY**

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

Private HospitalsC Inpatient Services  
Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2002-2003 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law". This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in June of 1994 which established the prospective reimbursement methodology for inpatient services provided in private (non-state) acute care general hospitals (*Louisiana Register, Volume 20, Number 6*). The June 20, 1994 Rule was subsequently amended to establish a weighted average per diem for each hospital peer group (*Louisiana Register, Volume 22, Number 1*). This Rule was later amended to discontinue the practice of automatically applying an inflation adjustment to the reimbursement rates in those years when the rates are not rebased (*Louisiana Register, Volume 25, Number 5*).

As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule that reduced the reimbursement paid for inpatient services rendered in private (non-state) acute hospitals, including long term hospitals, to 85 percent of the per diem rates (a 15 percent reduction) in effect on March 31, 2003 (*Louisiana Register, Volume 29, Number 4*). Small rural hospitals as defined by the Rural Hospital Preservation Act (R.S. 40:1300.143) were excluded from this reimbursement reduction. Based on comments received in response to the public process notice, the bureau has determined that it is necessary to further reduce the reimbursement reduction to private (non-state) acute hospitals, including long term hospitals. This action is being taken in order to avoid a budget deficit in the medical assistance programs. Taking the reduction in per diem rates in state fiscal year 2002-2003 into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) inpatient hospital services under the state plan are available at least to the extent that they are available to the general population in the state. It is estimated that implementation of this Emergency Rule will reduce expenditures for private hospital inpatient services by approximately \$1,837,226 for state fiscal year 2002-2003.

#### **Emergency Rule**

Effective for dates of service from May 19, 2003 through June 30, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces the reimbursement paid for inpatient services rendered in private (non-state) acute hospitals, including long term hospitals. The reimbursement shall be 95 percent of the per diem rates (a 5 percent reduction) in effect on March 31, 2003 for private hospitals with a Medicaid inpatient days utilization rate of 25 percent or greater and 90 percent of the per diem rates (a 10 percent reduction) in effect on March 31, 2003 for private hospitals with a Medicaid inpatient days utilization rate of less than 25 percent. The Medicaid inpatient days utilization rate shall be calculated based on the filed cost report for the period ending in state fiscal year 2002 and received by the department prior to April 30, 2003. Only Medicaid covered days for inpatient hospital services, which include newborn days and distinct part psychiatric units, are included in this calculation. Inpatient stays covered by Medicare Part A can not be included in the determination of the Medicaid inpatient days utilization rate. Small rural hospitals as defined by the Rural Hospital Preservation Act (R.S. 40:1300.143) shall be excluded from this reimbursement reduction.

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

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

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

David W. Hood  
Secretary

0306#002

### **DECLARATION OF EMERGENCY**

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

#### **Private HospitalsC Outpatient Services Reimbursement Reduction**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2002-2003 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in January of 1996 which established the reimbursement methodology for outpatient hospital services at an interim rate of 60 percent of billed charges and cost settlement adjusted to 83 percent of allowable costs documented in the cost report, except for laboratory services subject to the Medicare Fee Schedule and outpatient surgeries (*Louisiana Register, Volume 22, Number 1*).

As a result of a budgetary shortfall, the bureau adjusted the provisions contained in the January 1996 Rule governing the reimbursement methodology for outpatient hospital services. Reimbursement for those surgical procedures that were not included on the Medicaid outpatient surgery list was set at the highest flat fee in the four Medicaid established outpatient surgery payment groups when the procedure is performed in an outpatient setting. In addition, the interim reimbursement rate for all other outpatient hospital services was changed to a hospital specific cost to charge ratio calculation based on filed cost reports for the period ending in state fiscal year 1997 (*Louisiana Register, Volume 26, Number 12*).

As a result of a budgetary shortfall, the bureau adjusted the interim reimbursement rate for hospital outpatient services in private hospitals to a hospital specific cost to charge ratio calculation based on the latest filed cost reports.



The final reimbursement for these services will continue to be cost settlement at 83 percent of allowable costs (*Louisiana Register, Volume 29, Number 3*). This Emergency Rule is promulgated to continue the provisions of the March 1, 2003 Emergency Rule. This action is necessary in order to avoid a budget deficit in the medical assistance programs.

**Emergency Rule**

Effective for dates of service June 30, 2003 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology for outpatient hospital services to a hospital specific cost to charge ratio calculation based on the latest filed cost report. These cost to charge ratio calculations will be reviewed on an ongoing basis as cost reports are filed and will be adjusted as necessary.

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

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

David W. Hood  
Secretary

0306#055

**DECLARATION OF EMERGENCY**

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

**Rehabilitation ServicesC Reimbursement Fee Increase**

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage and reimbursement for rehabilitation services under the Medicaid Program. Rehabilitation services include physical, occupational and speech therapies Reimbursement is available for these services through outpatient hospital, home health, rehabilitation center and Early and Periodic Screening, Diagnosis and Treatment (EPSDT) health services. The bureau adopted a Rule establishing the reimbursement methodology for EPSDT rehabilitation services in April of 1997 (*Louisiana Register, Volume 23, Number 4*). The bureau also adopted a Rule establishing the reimbursement methodology for rehabilitation services rendered in rehabilitation center and outpatient hospital settings in June of 1997 (*Louisiana Register, Volume 23, Number 6*). The bureau adopted a subsequent Rule in May of

2001 to establish the reimbursement methodology for rehabilitation services rendered by home health agencies (*Louisiana Register, Volume 27, Number 5*). Reimbursement for these services is a flat fee established by the bureau minus the amount that any third party coverage would pay.

Act 13 of the 2002 Regular Session of the Louisiana Legislature directed the department to increase the reimbursement for physical therapy, occupational therapy, and speech/language and hearing therapy services provided to children under three years of age. In compliance with the Appropriation Bill and as a result of the allocation of additional funds by the legislature, the bureau increased the reimbursement rates for rehabilitation services provided to Medicaid recipients up to the age of three, regardless of the type of provider performing the services (*Louisiana Register Volume 28, Number 7*).

This Emergency Rule is being promulgated to continue the provisions contained in the July 6, 2002 Rule. This action is being taken to protect the health and welfare of Medicaid recipients under the age of three and to ensure access to rehabilitation services by encouraging the participation of rehabilitation providers in the Medicaid Program.

**Emergency Rule**

Effective for dates of services on or after July 4, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the April 20, 1997, June 20, 1997 and May 20, 2001 Rules governing the reimbursement methodology for rehabilitation services provided by outpatient hospitals, rehabilitation centers, home health agencies and Early and Periodic Screening, Diagnosis and Treatment (EPSDT) health services providers to increase the reimbursement rates for rehabilitation services provided to Medicaid recipients up to the age of three, regardless of the type of provider performing the services. The new reimbursement rates for rehabilitation services rendered to Medicaid recipients up to the use of three are as follows.

**Home Health Agencies and Outpatient Hospitals**

Procedure Name	New Rate
Initial Sp/Lang Evaluation	\$ 7 0.00
Initial Hearing Evaluation	\$ 70.00
Sp/Lan/Hear Therapy 60 Minutes	\$ 56.00
Visit W/Procedure(S) 45 Minutes	\$ 56.00
Visit W/Procedure(S) 60 Minutes	\$ 74.00
Visit W/Procedures 90 Minutes	\$112.00
Procedures And Modalities 60 Minutes	\$ 74.00
Pt And Rehab Evaluation	\$ 75.00
Initial Ot Evaluation	\$ 70.00
Ot 45 Minutes	\$ 45.00
Ot 60 Minutes	\$ 60.00

**Rehabilitation Centers**

Procedure Name	New Rate
Group Sp Lang Hear Therapy 1/2 Hour	\$ 26.00
Speech Group Therapy Add 15 Minutes	\$ 13.00
Group Sp Lang Hear Therapy 1 Hour	\$ 51.00
Initial Sp/Lang Evaluation	\$ 70.00
Initial Hearing Evaluation	\$ 70.00
Sp/Lang/Hear Therapy 30 Minutes	\$ 26.00
Sp/Lang/Hear Therapy 45 Minutes	\$ 39.00
Sp/Lang/Hear Therapy 60 Minutes	\$ 52.00
Visit W/Procedure(S) 30 Minutes	\$ 34.00

Visit W/Procedure(S) 45 Minutes	\$ 51.00
Visit W/Procedure(S) 60 Minutes	\$ 68.00
Visit W/Procedure(S) 75 Minutes	\$ 85.00
Visit W/Procedure(S) 90 Minutes	\$102.00
Ctr Visit One/More Modal/Proc 15 Minutes	\$ 17.00
Procedures And Modalities 60 Minutes	\$ 68.00
Pt And Rehab Evaluation	\$ 75.00
Initial Ot Evaluation	\$ 70.00
Ot 30 Minutes	\$ 26.00
Ot 45 Minutes	\$ 39.00
Ot 60 Minutes	\$ 52.00

**EPSDT Health Services**

<b>Procedure Name</b>	<b>New Rate</b>
Electrical Stimulation	\$ 17.00
Pt-One Area-Therapeutic-30 Minutes	\$ 17.00
Pt-Neuromuscular Reed-30 Minutes	\$ 17.00
Pt-Gait Training-30 Minutes	\$ 34.00
Orthotic Training	\$ 14.00
Kinetic Act One Area-30 Minutes	\$ 14.00
Physical Performance Test	\$ 14.00
Physical Therapy Evaluation/Re-Evaluation	\$ 92.00
Occ Therapy Evaluation/Re-Evaluation	\$ 70.00
Speech/Language Evaluation/Re-Evaluation	\$ 70.00
Speech/Language Therapy 30 Minutes	\$ 26.00
Speech/Language Therapy Add 15 Minutes	\$ 13.00
Group Sp Lang Hear Therapy 1/2 Hour	\$ 26.00
Speech Group Therapy 20 Minutes	\$ 13.00
Speech Group Therapy Add 15 Minutes	\$ 13.00
Group Sp Lang Hear Therapy 1 Hour	\$ 52.00
Speech Lang Hearing Therapy 20 Minutes	\$ 17.00
Sp/Lan/Hear Therapy 60 Minutes	\$ 52.00
Procedures And Modalities 30 Minutes	\$ 34.00
Procedures And Modalities 45 Minutes	\$ 52.00

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

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

David W. Hood  
Secretary

0306#056

**DECLARATION OF EMERGENCY**

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

Private Inpatient Psychiatric Services  
Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the

2002-2003 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law". This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the prospective reimbursement methodology for inpatient psychiatric hospital services provided in either a free-standing psychiatric hospital or distinct part psychiatric unit of an acute care general hospital (*Louisiana Register, Volume 19, Number 6*). This Rule was subsequently amended to discontinue the practice of automatically applying an inflation adjustment to the reimbursement rates for inpatient psychiatric services in those years when the rates are not rebased (*Louisiana Register, Volume 25, Number 5*).

As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule that reduced the reimbursement paid for private inpatient psychiatric services to 85 percent of the per diem rates (a 15 percent reduction) in effect on March 31, 2003 (*Louisiana Register, Volume 29, Number 4*). Small rural hospitals as defined by the Rural Hospital Preservation Act (R.S. 40:1300.143) were excluded from this reimbursement reduction. Based on comments received in response to the public process notice, the bureau has determined that is necessary to further reduce the reimbursement reduction for private inpatient psychiatric hospital services. This action is being taken in order to avoid a budget deficit in the medical assistance programs. Taking this reduction in per diem rates in state fiscal year 2002-2003 into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that inpatient psychiatric services under the state plan are available at least to the extent that they are available to the general population in the state. It is estimated that implementation of this Emergency Rule will reduce expenditures for private inpatient psychiatric services by approximately \$81,743 for state fiscal year 2002-2003.

**Emergency Rule**

Effective for dates of service from May 19, 2003 through June 30, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces the reimbursement paid for private inpatient psychiatric hospital services. The reimbursement shall be 95 percent of the per diem rates (a 5 percent reduction) in effect on March 31, 2003 for private hospitals with a Medicaid utilization rate of 25 percent or greater and 90 percent of the per diem rates (a 10 percent reduction) in effect on March

31, 2003 for private hospitals with a Medicaid utilization rate of less than 25 percent. The Medicaid inpatient days utilization rate shall be calculated based on the filed cost report for the period ending in state fiscal year 2002 and received by the department prior to April 30, 2003. Only Medicaid covered days for inpatient hospital services, which include newborn days and distinct part psychiatric units, are included in this calculation. Inpatient stays covered by Medicare Part A can not be included in the determination of the Medicaid inpatient days utilization rate. Small rural hospitals as defined by the Rural Hospital Preservation Act (R.S. 40:1300.143) shall be excluded from this reimbursement reduction.

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

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

David W. Hood  
Secretary

0306#001

## DECLARATION OF EMERGENCY

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

#### Private Intermediate Care Facilities for the Mentally RetardedC Reimbursement Reduction

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

#### **Emergency Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing published an Emergency Rule reducing the reimbursement paid to private for profit intermediate care facilities for the mentally retarded (ICF-MR) to 85 percent of the per diem rates (a 15 percent reduction) in effect on March 31, 2003 and to private non-profit intermediate care facilities for the mentally retarded to 92.5 percent of the per diem rates (a 7.5 percent reduction) in effect on March 31, 2003 (*Louisiana Register, Volume 29, Number 4*). The department has now determined that it is necessary to rescind this Emergency Rule and notification is provided to interested persons through this medium.

David W. Hood  
Secretary

0306#050

# Rules

## RULE

### Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Boll Weevil Eradication Commission

#### Program Participation, Fee Payment and Penalties (LAC 7:XV.321)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry has amended the Boll Weevil Eradication Program.

The Department of Agriculture and Forestry has amended these Rules and regulations for the purpose of establishing a deadline for cotton producers to request a waiver of the assessment on any acre of cotton planted for a crop year. These Rules are enabled by R.S. 3:1609, 1612 and 1613.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XV. Plant Protection and Quarantine

##### Chapter 3. Boll Weevil

#### §321. Program Participation, Fee Payment and Penalties

A. - B.2. ...

3. A waiver of the assessment on any acre planted in cotton for a crop year may be requested and obtained in accordance with the following procedure.

a. A cotton producer may request a waiver of the assessment on any acre planted in cotton for a crop year if a written request for a waiver is received by the commission, through mail, fax or other form of actual delivery, on or before 4:30 p. m. on August 1 of the crop year for which the waiver is requested. A written request for a waiver will be deemed to be timely when the papers are mailed on or before the due date. Timeliness of the mailing shall be shown only by an official United States postmark or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. A fax shall be considered timely only upon proof of the commission's receipt of the transmission.

b. The written request for a waiver must show the name of the cotton producer, the field number, the number of acres for which a waiver is requested, the date the acres were failed, the reasons the waiver is being requested and a certification that all living cotton plants and cotton stalks were destroyed prior to July 15 of the crop year and that the acreage will remain void of all living cotton plants through December 31 of the same crop year.

c. Each cotton producer who has timely filed a request for a waiver with the commission shall be notified of the date, time and place the commission is scheduled to consider the request for a waiver at least 10 days prior to the commission meeting.

d. The granting of a waiver is within the discretion of the commission.

e. A cotton producer, whose timely request for a waiver is denied by the commission, shall be entitled to pay

his assessment without imposition of a per acre penalty fee if he pays the assessment within 30 days after receiving written notification of the commission's decision.

B.4. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1609, 1612 and 1613.

HISTORICAL NOTE: Promulgated by the Department of Agriculture & Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:669 (July 1995), amended LR 23:195 (February 1997), LR 24:2231 (December 1998), LR 25:829 (May 1999), LR 29:859 (June 2003).

Bob Odom  
Commissioner

0306#038

## RULE

### Economic Development Office of Business Development Business Resources Division

#### Louisiana Small Business Linked Deposit Loan Program (LAC 19:VII.7303 and 7305)

The Department of Economic Development, Office of Business Development, Business Resources Division, pursuant to the authority of R.S. 51:2312 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended §§7303 and 7305 of the Rules of the Louisiana Small Business Linked Deposit Loan Program. The purpose of the amended Rules is to provide for a floor interest rate to the state of 0.5 percent. Currently the program has no floor and in a low interest environment the state would not receive earnings on the deposits.

## Title 19

### CORPORATIONS AND BUSINESS

#### Part VII. Economic Development Corporation

##### Subpart 7. Louisiana Small Business Linked Deposit Loan Program

#### Chapter 73. Procedures for Authorization and Administration

##### §7303. General Provisions

A. The Linked Deposit Program is funded to meet all current and anticipated application needs. The extreme changes in the interest rate environment in recent years have, on occasion, presented the Treasury with a dilemma. Interest earnings on Treasury deposits supporting the Linked Deposit Program have been so low that the rate buy down prescribed below would force the Treasury to accept zero or negative earnings on its money. To preclude such events, a floor of 0.5 percent (0.005) is set as the lowest interest earnings accepted for Treasury funds on deposit under the Linked Deposit Program, as determined by the State Treasury. The buy down described, to the extent that it does not violate this floor, will be awarded on approval of an application.

B. Priority for application approval and funding shall be given as follows:

1. an eligible Louisiana business located in a very high unemployment area which creates one or more jobs shall receive a maximum of a four percent interest rate buy down;

2. an eligible Louisiana business located in a high unemployment area which creates three or more jobs shall receive a three percent interest rate buy down (less than three jobs shall receive two percent);

3. an eligible Louisiana certified disadvantaged business, disabled owned business, or research recipient of a Small Business Innovative Research Grant, which creates one or more jobs shall receive a maximum of a three percent interest rate buy down;

4. an eligible Louisiana business, in a low unemployment area that creates four or more jobs shall receive a maximum of a two percent interest rate buy down;

5. an eligible Louisiana business in a low unemployment area creating one to four jobs shall receive a maximum of a one percent interest rate buy down.

C. At no time shall the total amount of the dollars in the linked deposits in low unemployment areas exceed 33 percent of the total available for linked deposits, unless otherwise specified by the treasurer.

D. Applications which provide a "but for" statement shall be eligible for a five year term on the linked deposit. All other applications are eligible for two year terms only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:859 (June 2003).

**§7305. Linked Deposit Loan Program Authorization Lending Institution Requirements; Applicants Requirements and Conditions for Approval**

A. - K. ...

L. Upon placement of a linked deposit with an eligible lending institution, the institution shall lend such funds to the approved eligible small business listed in the linked deposit loan package. Each loan shall be at a fixed or variable rate of interest for a period of one year, coinciding with the annual maturity of the linked Treasury funds, and shall be the allowed percentage below the current competitive borrowing rate applicable to each eligible small business. At each annual maturity, the lender shall adjust the loan rate for the next year to the then competitive rate for that business, considering the usual concerns for loan payment performance and overall risk. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with this Section in the form and manner prescribed by the Treasurer shall be completed by the lending institution and filed with the treasurer and the corporation.

M. ...

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic

Development, Office of Business Development, Business Resources Division, LR 29:860 (June 2003).

Don J. Hutchinson  
Secretary

0306#035

**RULE**

**Department of Economic Development  
Office of Business Development  
Economic Development Corporation**

Economic Development Award Program (EDAP)  
(LAC 13:III.Chapter 1)

The Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, pursuant to the authority of R.S. 51:2341(B) and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., has amended §§101-117 of the following Rules of the Economic Development Award Program, and adopted §§119, 121, and 123. The purpose of the Rules is to establish guidelines for both the basic EDAP as well as the Opportunity Fund projects. The inclusion of Rules for the Opportunity Fund will allow the state to provide larger EDAP awards in an effort to be more competitive in trying to attract larger economic development projects. Securing such projects will create additional job opportunities and infrastructure for Louisiana citizens and businesses. In addition the amended Rules comply with changes to the organizational placement of the EDAP within the department and changes to the approval procedures provided by Acts 2001, No. 9.

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part III. Financial Assistance Programs**

**Chapter 1. Economic Development Award Program (EDAP)**

**§ 101. Purpose**

A. The Economic Development Award Program and the Louisiana Opportunity Fund Program are vital to support the state's commitment to cluster based economic development and the state's long term goals as set forth in Louisiana: Vision 2020, which is the master plan for economic development for the state of Louisiana.

B. The purpose of the program is to finance publicly-owned infrastructure for industrial or business development projects that promote cluster economic development and that require state assistance for basic infrastructure development. Additionally, through the Louisiana Opportunity Fund, under circumstances hereinafter set forth, the governor, with the approval of the board of directors of Louisiana Economic Development Corporation, may take necessary steps to successfully secure projects in highly competitive bidding circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

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

### § 103. Definitions

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

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

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

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

**Basic Infrastructure Project** refers to those infrastructure projects other than those for which the governor and the LEDC Board have made a determination that the Louisiana Opportunity Fund is applicable.

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

**LEDC** the Louisiana Department of Economic Development.

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

**LEDC** the Louisiana Economic Development Corporation.

**Opportunity Fund** the Louisiana Opportunity Fund provides for infrastructure project financial assistance, appropriations, grants or loans in order to attract new in-state business investment or in-state expansion of existing businesses when, in the opinion of the governor of Louisiana, there exists a highly competitive project bidding situation where a company is in the final stages of site selection and considers Louisiana to be roughly equivalent in terms of factor advantages to one or more other states.

**Program** the Economic Development Award Program, including Basic Infrastructure Projects and Opportunity Fund Projects that are undertaken by DED, LEDC, the public entity and the company pursuant to these Rules and the bylaws of LEDC.

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

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

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

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2341, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), amended LR 25:237 (February 1999), LR

26:236 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003).

### §105. General Principles

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

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana.

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

3. Awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities.

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

5. The anticipated economic benefits to the state will be considered in making the award.

6. Appropriate cost matching among project beneficiaries is a factor in the consideration of the award.

7. A two year moratorium will be required on additional EDAP awards to the same company at the same location.

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

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2341, et seq.

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

### §107. Eligibility

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

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

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if company has another contract with DED or LEDC in which the company is in default and/or is not in compliance.

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

1. retail business operations;
2. real estate developments;
3. hospitality operations;
4. gaming operations;
5. this ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities

are related to ineligible business enterprises, provided that retail sales, hospitality services and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

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

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

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

1. Job Creation/Retention and Capital Investment
  - a. Basic Infrastructure Projects must create or retain at least 10 permanent jobs in Louisiana.
  - b. Consideration will be given for projects having a significant new private capital investment.
  - c. The number of jobs to be retained and/or created as stated in the application for basic infrastructure projects will be strictly adhered to, and will be made an integral part of the award agreement.
2. Preference will be given to projects for industries identified by DED or LEDC as cluster industries, and to projects located in areas of the state with high unemployment levels.
3. Preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community.
4. Companies must be in full compliance with all state and federal laws.
5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the US Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.
6. The minimum award request size shall be \$25,000.
7. Consideration will be given for wages substantially above the prevailing regional wage.
8. If a company does not begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, within 365 calendar days after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), amended LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003).

#### **§111. Criteria for Louisiana Opportunity Fund Projects**

A. The governor shall determine that a project meets the general principles set forth above, and that a company meets the following criteria, it is either:

1. in the final stages of site selection and considers Louisiana to be equivalent in terms of factor advantages to one or more other states for locating here; or
2. the governor determines that a company operating in Louisiana is in the final stages of deciding whether or not to expand, invest new capital and to retain or create jobs in Louisiana, or to do so in another state or states rather than in Louisiana.

B. The governor shall provide notice to the chairman of the board of directors of LEDC and request that a special meeting of the board be called in accordance with the bylaws of LEDC, and a meeting of the LEDC Board of Directors shall be called to consider such financial benefits by way of financial assistance, appropriations, grants or loans as may facilitate and provide for necessary infrastructure improvements so as to induce a company to locate in Louisiana, or to expand and invest additional capital in Louisiana.

C. The governor shall certify to LEDC and provide appropriate information and documentation through which the LEDC Board must determine:

1. the project would, because of competition from other states and other pertinent factors, not happen in Louisiana in the absence of the infrastructure assistance being provided;
2. the project does not require government funding in order to be successful, but stands on its own merits;
3. the project provides an important interconnection between constituent companies of cluster-based economic development, and either provides or fulfills critical mass for targeted cluster-based development;
4. the project will result in fulfilling one or more of the purposes for which the offices of DED are created as defined by R.S. 36:108;
5. if the project is a new one for a company not currently located in Louisiana, or a new facility separate and apart from a company's existing facility in Louisiana;
  - a. the project will be instrumental in the creation of a \$15 million minimum new private capital investment by the company, with at least a 5 to 1 ratio of new private capital investment to the award under this Program;
  - b. the project will result in the creation of a minimum of 100 new permanent jobs with salaries at least equal to the respective parish's average weekly wage for the respective industry, or where no industry average is available, at least equal to 10 percent above the parish's per capita average weekly wage, as determined by the Louisiana Department of Labor; and
  - c. the company must offer health care insurance coverage for the employees;
6. if the project is for an existing business operation in Louisiana, there is evidence:
  - a. of either:
    - i. a written commitment from another state of the United States or foreign country setting forth the terms and

conditions for relocation of the Louisiana operation outside of this state; or

ii. that the company will pursue a project for expansion of capital facilities and/or additional jobs, either in Louisiana or in a state other than Louisiana; and

b. that the company will substantially modernize and/or increase its capital investment in Louisiana, creating or retaining at least 50 permanent jobs, with a minimum new private capital investment of \$30 million in improvements and/or modernization of Louisiana facilities, with at least a 5 to 1 ratio of new private capital investment to the award under this program.

D. If a company does not begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, within 180 calendar days after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), amended LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003).

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

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

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

2. a description of the project along with the factors creating the need, including construction, operation and maintenance plans, and a timetable for the project's completion;

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

4. any additional information that DED or LEDC may require.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

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

### **§115. Application Procedure for Louisiana Opportunity Fund Projects**

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

1. a business plan that contains an overview of the company, its history, and the business climate in which it

operates, including financial statements and business projections;

2. a description of the project along with the factors creating the need, including construction, operation and maintenance plans, and a timetable for the project's completion;

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

4. any additional information that may be required by DED or LEDC.

B. In order for the application to be considered by the LEDC Board of Directors, the governor must submit it to the board along with his certifications, as required by §111 above.

C. When, in the opinion of the governor, use of the Louisiana Opportunity Fund is warranted under circumstances of highly competitive bidding for a new business or an existing business that meets the general principles of §105, the eligibility requirements under §107, and meets the criteria set forth in §111 above, the governor may request the chairman of the Board of LEDC to call a special meeting of the Board of Directors of LEDC pursuant to the Bylaws of LEDC; and thereafter, a meeting of the Board of Directors of LEDC shall be called in order for the Board to consider the use of funds from the Louisiana Opportunity Fund as may be recommended by the governor. The LEDC Board may take such action as may be necessary promptly and expeditiously because of and consistent with the competition presented by other states, and shall approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1640 (December 1997), amended LR 25:239 (February 1999), LR 26:238 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003).

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

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

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

2. validate the information presented;

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

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

C. Upon determination that an application meets the general principles of §105, the eligibility requirements under §107, and meets the criteria set forth for this program under §109, DED staff will then make a recommendation to the



LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:405 (March 1999), amended LR 26:239 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003).

### **§119. Submission and Review Procedure for Louisiana Opportunity Fund Projects**

A. DED shall provide staff for prompt and timely review of submissions by the governor of projects to be funded by the Louisiana Opportunity Fund. Input may be required from the company, the public entity, other divisions of DED, LEDC, and other state agencies or political subdivisions of the state as needed in order to:

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

2. validate the information presented, and determine whether or not the project meets the general principles of §105, the eligibility requirements of §107, and falls within the criteria for use of the Opportunity Fund as provided in §111 above;

3. determine the feasibility of the company's plan in the context of the criteria for use of the Opportunity Fund as provided in §111 above;

4. prepare a preliminary economic cost-benefit analysis of the project, including a preliminary analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, including an evaluation based on the Regional Input/Output Model System II (RIMS), or its successor;

5. make recommendations based upon the foregoing to the Board of Directors of LEDC, and the LEDC Board shall review and approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003).

### **§121. General Award Provisions**

A. Except where indicated, these provisions shall be applicable to Basic Infrastructure Awards and to Louisiana Opportunity Fund awards. Agreement resulting from the expedited procedures for the Louisiana Opportunity Fund award shall demonstrate the intent of the company, the public entity, DED, and LEDC to enter into the following.

1. Award Agreement. A contract or Cooperative Endeavor Agreement will be executed between DED, acting through the LEDC, the public entity and the company. The agreement will specify the performance objectives expected of the company(ies) and the public entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment and job creation. Under the agreement, the public entity will oversee the progress of the project. DED or LEDC will disburse funds to the public entity in a manner determined by DED or LEDC.

### **2. Funding**

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

i. engineering and architectural expenses;

ii. site acquisition;

iii. site preparation;

iv. construction expenses;

v. building materials;

vi. capital equipment having an Internal Revenue Service (IRS) depreciable life of at least seven years. If any such eligible equipment is not to be located on public property, the owner, lessor and lessee of such private property shall each execute a written lien waiver or release allowing representatives of the public entity to enter upon such private property and remove therefrom any or all of such equipment at any time the public entity shall determine such to be in its ownership interest to do so.

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

i. recurrent expenses associated with the project (e.g., operation and maintenance costs);

ii. company moving expenses;

iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

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

v. refinancing of existing debt, public or private;

vi. furniture, fixtures, computers, consumables, transportation equipment, rolling stock or equipment having an IRS depreciable life of less than seven years.

B. Amount of Award. Following the appropriation of funds for each fiscal year, the Board of Directors of LEDC shall allocate the amount of such funds available for Basic Infrastructure Awards and for Louisiana Opportunity Fund Awards.

#### **1. For Basic Infrastructure Awards**

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

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

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

iii. 50 percent for all other projects.

b. Other state funds cannot be used as the match for EDAP funds.

c. All monitoring will be done by DED or LEDC. Expenditures for monitoring or fiscal agents may be deducted from awards.

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

e. The LEDC Board of Directors, in its discretion, may limit the amount of awards to effect the best allocation

of resources based upon the number of projects requiring funding and the availability of program funds.

2. For Louisiana Opportunity Fund Awards, Resources shall be allocated in accordance with the recommendations of the Governor and as approved by the Board of Directors of LEDC and shall effect the best allocation of resources, based upon the number of projects anticipated to require similar funding and the availability of program funds.

C. Conditions for Disbursement of Funds

1. Award funds will be available to the public entity on a reimbursement basis following submission of required documentation to DED or LEDC from the public entity.

2. Program Funding Source

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

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

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

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

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

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

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

E. Compliance Requirements

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

2. In the event a company or public entity fails to meet its performance objectives specified in its agreement with DED and LEDC, DED and LEDC shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company

and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless DED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event a company or public entity knowingly files a false statement in its application or in a progress report or other filing, the company or public entity and/or their representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003).

**§123. Conflicts of Interest**

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:865 (June 2003).

Don J. Hutchinson  
Secretary

0306#034

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741C Louisiana Handbook for School  
Administrators C Louisiana Principal/Assistant  
Principal Induction Program  
(LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741C Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975).

The changes to Standard 1.016.10 will change the name of the Louisiana Principal/Assistant Principal Internship Program to the Louisiana Principal/Assistant Principal Induction Program. This will lessen the confusion between the state sponsored program mandated by SBESE and the required internship component for university programs in Educational Leadership.

The changes will also include administrative assistants and acting principals/assistant principals in the program that will provide support and build capacity of these administrators to provide leadership in both instructional and administrative areas during their first year(s) in a school leadership role.

With the development and implementation of a standards-based induction program in 1999-2000 in which assistant principals and first-year principals participate in a parallel program, it is necessary to ensure continuity and a logical transition as the administrator moves along the career path from assistant principal to principal. As a result of these changes, the waiver which allowed principals to request an exemption from participation in year two of the program

based on five years of administrative experience and participation in the Administrative Leadership Academy will no longer apply if their participation in the program was prior to 1998.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans**

**Subchapter A. Bulletins and Regulations**

**§901. School Approval Standards and Regulations**

A. Bulletin 741

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education, LR 28:269 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:866 (June 2003).

System Policies and Standards	School Policies and Standards
<p><b>1.016.10</b> All newly appointed principals and assistant principals with standard or provisional certification shall participate in the Principal/Assistant Principal Induction Program.</p> <p>The program shall include the following:</p> <p style="padding-left: 20px;">Individuals appointed to a principalship or an assistant principalship after October 1 shall be enrolled in the Principal Induction Program at the beginning of the following school year.</p> <p style="padding-left: 20px;">Principal/Assistant Principal Induction requirements shall also apply to individuals serving in the following leadership capacities:</p> <ul style="list-style-type: none"> <li>• Administrative Assistant: fully certified and serving in a full-time, full-year administrative capacity.</li> <li>• Acting Principal or Assistant Principal: fully certified and serving in a full-time, full-year administrative capacity.</li> </ul> <p>A newly appointed principal who successfully completed the Assistant Principal Induction Program in 1999-2000 shall complete only Year One requirements of the Principal Induction Program.</p> <p>A newly appointed principal who successfully completed the Assistant Principal Induction Program in 2000-2001 shall complete only Year Two requirements of the Principal Induction Program.</p> <p>A newly appointed principal who did not complete the Assistant Principal Induction Program or completed the program in 1998 or before shall complete the two-year requirements of the Principal Induction Program.</p> <p>Upon successful completion of two years of the Induction Program requirements, an individual may request to have provisional status removed from their certificate.</p>	<p><b>2.016.10</b> All newly appointed principals and assistant principals with standard or provisional certification shall participate in the Principal/Assistant Principal Induction Program.</p> <p>The program shall include the following:</p> <p style="padding-left: 20px;">Individuals appointed to a principalship or an assistant principalship after October 1 shall be enrolled in the Principal Induction Program at the beginning of the following school year.</p> <p style="padding-left: 20px;">Principal/Assistant Principal Induction requirements shall also apply to individuals serving in the following leadership capacities:</p> <ul style="list-style-type: none"> <li>• Administrative Assistant: fully certified and serving in a full-time, full-year administrative capacity.</li> <li>• Acting Principal or Assistant Principal: fully certified and serving in a full-time, full-year administrative capacity.</li> </ul> <p>A newly appointed principal who successfully completed the Assistant Principal Induction Program in 1999-2000 shall complete only Year One requirements of the Principal Induction Program.</p> <p>A newly appointed principal who successfully completed the Assistant Principal Induction Program in 2000-2001 shall complete only Year Two requirements of the Principal Induction Program.</p> <p>A newly appointed principal who did not complete the Assistant Principal Induction Program or completed the program in 1998 or before shall complete the two-year requirements of the Principal Induction Program.</p> <p>Upon successful completion of two years of the Induction Program requirements, an individual may request to have provisional status removed from their certificate.</p>

Weegie Peabody  
Executive Director

0306#016

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 1706C Regulations for Implementation of the Children with Exceptionalities Act  
Students with Disabilities  
(LAC 28:XLIII.Chapters 1-10)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1706C Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A, Regulations for Students with Disabilities (LAC 28:XLIII).

The revisions to *Bulletin 1706C The Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A, Regulations for Students with Disabilities, formally changes the state regulations to be in compliance with the 1999 revisions to the federal regulations of IDEA, Part B and in the state statute at R.S.17:1941 et seq. They make the State Advisory Panel consistent with state and federal statutes; they change the language to be consistent with federal regulations regarding due process and state statute in converting to a one-tier due process hearing system. They clarify timelines regarding re-evaluations for toddlers turning three; they clarify what information must be reviewed at IEP meetings and what clarifies as nonacademic activities, they clarify serving students in their least restrictive environment; they clarify responsibilities when placing students for services in private schools; they clarify rights of parents and students; they provide guidance regarding fiscal responsibilities of noneducational agencies; they provide regulations for interagency coordination with other state agencies; they provide or clarify definitions; they remove all references to handbooks.

**Title 28  
EDUCATION**

**Part XLIII. Bulletin 1706C Regulations for Implementation of the Children with Exceptionalities  
Subpart A. Regulations for Students with Disabilities  
Chapter 1. Responsibilities of the State Board of Elementary and Secondary Education**

**§105. Approval of IDEAC Part B Application**

A. The state board will review and approve the state policies and procedures required by the IDEA application before their submission to the U.S. Department of Education.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000), amended LR 29:867 (June 2003).

**§130. State Advisory Panel (Panel)**

A. - C.2. ...

3. The panel shall advise the state board and the department in developing evaluations and reporting on data to the Secretary of Education.

4. - 7. ...

8. Repealed.

D. - D.6. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000), amended LR 29:867 (June 2003).

**§§131-199. Reserved.**

**Chapter 2. Responsibilities of the Superintendent of Public Elementary and Secondary Education and of the Department of Education**

**§201. General Responsibilities and Authorities**

A. The State Superintendent of Public Elementary and Secondary Education (the State Superintendent) and the State Department of Education (the department) shall administer those programs and policies necessary to implement R.S.17:1941 et seq.

1. - 4. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:641 (April 2000), amended LR 29:867 (June 2003).

**§240. Impartial Hearing Officers**

A. The department and each LEA shall maintain a list of qualified and impartial hearing officers. The list shall include a statement of the qualifications of each of those persons.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:641 (April 2000), amended LR 29:867 (June 2003).

**§§253-259. Reserved.**

**§260. Full Educational Opportunity Goal**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:642 (April 2000), repealed LR 29:867 (June 2003).

**Chapter 3. Responsibilities and Activities of the Division of Special Populations**

**§302. Monitoring, Complaint Management and Investigation**

A. ...

B. The Division shall monitor in accordance with established procedures all public and participating private schools and other education agencies for compliance with these and other applicable federal regulations, state statutes and standards.

C. - E. 1. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:643 (April 2000), amended LR 29:867 (June 2003).

**§369. Personnel Standards**

A. Personnel of state and local public and private educational agencies, including local agency providers, who deliver special education services (including instructional, appraisal, related, administrative, and support services) to children and youth with disabilities (3 through 21) shall meet appropriate entry level requirements that are based on the highest requirements in Louisiana applicable to the

profession or discipline in which the person is providing special education or related services.

A.1. - F. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:644 (April 2000), amended LR 29:867 (June 2003).

#### **Chapter 4. Responsibilities of Local Educational Agencies**

##### **§401. Responsibilities of LEAs**

A. Each LEA shall identify and locate each student suspected of having a disability (regardless of the severity of the disability), birth through 21 years of age, residing within its jurisdiction.

B. - E.4. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:647 (April 2000), amended LR 29:868 (June 2003).

##### **§405. Special Education and Early Intervention Services for Infants and Toddlers with Disabilities Less Than 3 Years of Age**

A. LEAs have the option of providing special education and early intervention services to infants and toddlers with disabilities who are from birth to 3 years of age.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000), amended LR 29:868 (June 2003).

##### **§410. Child Search (Child Find) Activities for Infants and Toddlers with DisabilitiesC Birth through 2 Years of Age**

A. If, in the process of implementing these regulations, any LEA locates a child within these age ranges who is suspected of having a disability shall be referred to the Lead Agency's designated point of entry.

B. For children 2.6 years of age or older, follow the procedures in §415.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:868 (June 2003).

##### **§411. Child Search (Child Find) Activities for Students 3 through 21 Years of Age**

A. - C. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000), amended LR 29:868 (June 2003).

##### **§413. Students in an Educational Program Operated by the LEA**

A. An LEA shall identify a student as suspected of having a disability by the School Building Level Committee (SBLC). This committee shall coordinate and document the results, as appropriate, of educational screening, sensory screening, health screening, speech and language screening, or motor screening, and the results of the intervention efforts.

B. - C. ...

D. Within 10 business days after receipt of the referral by the pupil appraisal office for an individual evaluation, the evaluation coordinator shall complete required initial activities.

E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000), amended LR 29:868 (June 2003).

##### **§415. Students Out of School and/or Former Special Education Students Residing in the State**

A. Students out of school, including students ages 3 through 5 years who are suspected of having a disability and former special education students who have left a public school without completing their public education by obtaining a state diploma, shall be referred to the LEA's Child Search Coordinator, who shall locate and offer enrollment in the appropriate public school program and refer them for an individual evaluation, if needed. Students may be enrolled with the development of an interim IEP based on their individual need following the enrollment process in §416. If the Louisiana evaluation is current, students may be enrolled with the development of a review IEP within five school days.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:868 (June 2003).

##### **§416. Students with a Documented Severe or Low-Incidence Impairment; Students Who May Be Transferring from out of State; or Infants and Toddlers with Disabilities**

A. Students who have a documented severe or low-incidence impairment documented by a qualified professional shall be initially enrolled in a special education program concurrent with the conduct of the evaluation. This enrollment process, from the initial entry into the LEA to placement, shall occur within 10 school days and shall include the steps, as listed below.

1. - 5. ...

B. Students who have been receiving special education services in another state may be initially enrolled in a special education program, on an interim IEP, concurrent with the conduct of the evaluation. The enrollment process shall be the same as in §416.A.

1. ...

C. For toddlers transitioning from Part C programs to preschool special education programs, the LEA shall follow federally mandated time lines and procedures to ensure a smooth and effective transition between programs. The LEA is required to participate in transition planning conferences at least 90 days, and at the discretion of the parties, up to 6 months prior to the age the student is eligible for preschool special education services. The purpose of this conference is to discuss services the student may receive after his or her third birthday. The LEA shall have the multidisciplinary evaluation completed and the IEP developed for all eligible students for implementation by the student's third birthday to ensure the continuity of services.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:868 (June 20003).

**§417. Students with Disabilities Transferring from One LEA to Another LEA within Louisiana**

A. ...

B. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:869 (June 2003).

**§418. Evaluation and Re-Evaluation**

A. A full and individual evaluation shall be conducted for each student being considered for special education and related services under these regulations to determine whether the student is a "student with a disability" as defined in these regulations and to determine the educational needs of the student. The evaluation shall be conducted as mandated; and, if it is determined the student is a "student with a disability," the results of the evaluation shall be used by the student's IEP team.

B. A re-evaluation of each student with a disability shall be conducted as mandated; and the results of any re-evaluations shall be addressed by the student's IEP team in reviewing and, as appropriate, revising the student's IEP.

C. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:869 (June 2003).

**§431. Required Individual Evaluation**

A. - B.1. ....

2. it is requested in writing by the student's parent(s) (a request for a reevaluation may be presented orally if the parent is illiterate in English or has a disability that prevents the production of a written statement);

B.3. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000), amended LR 29:869 (June 2003).

**§433. Evaluation Coordination**

A. ...

B. The evaluation coordinator shall ensure that the evaluation is conducted including the following: initial responsibilities following receipt of referral, selection of participating disciplines, procedural responsibilities, and mandated time lines.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000), amended LR 29:869 (June 2003).

**§434. Evaluation Process and Procedures**

A. Individual evaluations shall be conducted according to the procedures for evaluation for each disability.

B. The determination of a disability shall be based upon the established criteria for eligibility before the initial delivery of special education and related services.

C. - C.11. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000), amended LR 29:869 (June 2003).

**§436. Time Lines**

A. - B. ...

C. Extensions of evaluation time lines shall be justified by established criteria.

D. The required triennial re-evaluation shall be completed on or before the third year anniversary date.

E. The required evaluation for toddlers transitioning into preschool special education services shall be completed and the IEP developed, if eligible, by the student's third birthday.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000), amended LR 29:869 (June 2003).

**§437. Determination of Needed Evaluation Data**

A. In conducting re-evaluations under these regulations and as part of an initial evaluation, if appropriate, the evaluation team shall comply with prescribed procedures as described below.

1. - 5. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000), amended LR 29:869 (June 2003).

**§438. Evaluating Students with Specific Learning Disabilities**

A. The procedures for evaluating a student suspected of having a specific learning disability including team members, criteria for eligibility, observation requirements, and the written report shall be conducted according to mandated procedures.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:652 (April 2000), amended LR 29:869 (June 2003).

**§440. IEP/Placement Responsibilities**

A. ...

1. Each LEA shall be responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a student with a disability in accordance with all the requirements of this Subpart.

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

3. Each LEA shall ensure the team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general curriculum, if appropriate, as well as concerns in any areas noted in §444.

4. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:652 (April 2000), amended LR 29:869 (June 2003).

**§441. IEP Team Participants**

A. - A.7. ...

a. The LEA shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the student's

transition service needs under §444.M.1, the needed transition services for the student under §444.M2., or both.

7.b. - 8. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:652 (April 2000), amended LR 29:869 (June 2003).

#### **§444. IEP Content and Format**

A. - M.2. ...

3. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:654 (April 2000), amended LR 29:870 (June 2003).

#### **§446. Least Restrictive Environment**

A. - A.8. ...

9. Nonacademic and extracurricular services and activities shall be provided in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities including meals and recess periods and participates with nondisabled children in these services and activities to the maximum extent appropriate to the needs of that child; and may include counseling services, recreational activities, athletics, transportation, health services, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.

A.10. - C. ...

1. early childhood setting;
2. early childhood special education setting;
3. home;
4. part-time early childhood/part-time early childhood special education setting;
5. residential facility;
6. separate school;
7. itinerant service outside the home; or
8. reverse mainstream setting.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:655 (April 2000), amended LR 29:870 (June 2003).

#### **§447. Extended School Year Services**

A. ...

B. LEAs shall provide educational and related services beyond the normal school year to students with disabilities when these students are determined to be in need of or eligible for such services for the provision of a FAPE. Student eligibility, which may not limit ESY services to particular categories of disabilities, shall be determined in accordance with extended school year program eligibility criteria requirements.

C. The student's extended school year program is to be designed according to the ESY IEP team, in determining the duration, amount and type of extended school year services,

shall not be bound or limited by any predetermined program or length. The extended school year services shall be determined by the IEP team on an individual basis for each student.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:656 (April 2000), amended LR 29:870 (June 2003).

#### **§449. IEP Declassification Placement**

A. When a re-evaluation indicates that a student with a disability currently enrolled in special education no longer meets all the criteria for classification as a student with a disability, the LEA shall either:

1. - 2. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:657 (April 2000), amended LR 29:870 (June 2003).

#### **§451. Requirements for Placed or Referred Students with Disabilities**

A. - F. ...

G. Notwithstanding any other provision of these regulations, when it is necessary to provide special education and related services in programs other than public schools, these placements must not occur until it has been determined that the student cannot be appropriately educated by another governmental agency of the state. After determination has been made that neither the public schools nor another governmental agency of the state can adequately provide special education and related services, then private programs within the state (the third alternative) must be considered. If these programs are still inadequate to meet the educational needs of the student, then out-of-state private programs may be approved.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:657 (April 2000), amended LR 29:870 (June 2003).

#### **§460. Students with Disabilities in Private Schools Placed or Referred by LEAs**

A. ...

B. Before an LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA shall initiate and conduct a meeting to develop an IEP for the child in accordance with §§440-460 of these regulations.

C. The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

D. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

E. If the private school or facility initiates and conducts these meetings the LEA shall ensure that the parents and an agency representative:

1. are involved in any decision about the child's IEP; and
2. agree to any proposed changes in the IEP before those changes are implemented.

F. Even if a private school or facility implemented a child's IEP, responsibility for compliance with this Part remains with the LEA and the SEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:658 (April 2000), amended LR 29:870 (June 2003).

**§462. Students with Disabilities Enrolled by Their Parents in Private Schools**

A. - D.2. ...

a. Each LEA shall consult with representatives of private school students in deciding how to conduct the annual child count of the number of private school students with disabilities and shall ensure that the count is conducted on December 1 of each year.

D.2.b. - L.5. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:658 (April 2000), amended LR 29:871 (June 2003).

**§491. Child Count**

A. ...

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program (IEP).

C. - C.2. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:662 (April 2000), amended LR 29:871 (June 2003).

**§494. Obligation of Noneducational Public Agencies**

A. - B. ...

C. If a public agency other than the educational agency fails to provide or pay for the special education and related services in Subsection A, the LEA or department shall provide or pay for these services to the student in a timely manner. The LEA or department may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or department in accordance with the terms of the interagency agreement.

D. Nothing in this part relieves the participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for transition services that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:663 (April 2000), amended LR:871 (June 2003).

**Chapter 5. Procedural Safeguards**

**§503. Independent Educational Evaluation**

A. - C.3. ...

4. If a parent requests an IEE at public expense, the LEA must ensure that the evaluation is provided at public expense, unless the LEA demonstrates in a hearing under

§507 of these regulations that the evaluations obtained by the parent did not meet agency criteria.

D. An IEE obtained at public expense shall meet the same criteria established by these regulations. The LEA may not impose conditions on obtaining an IEE, other than the mandated criteria

E. If the parents obtain an IEE at private expense and it meets the mandated criteria, the results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education to the student; and they may be presented as evidence at a hearing as described in §507 of these regulations regarding the student.

F. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:664 (April 2000), amended LR 29:871 (June 2003).

**§504. Prior Notice and Procedural Safeguard Notice**

A. - B. ...

1. a description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any other options the LEA considered and reasons why those options were rejected;

B.2. - F.3. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:664 (April 2000), amended LR 29:871 (June 2003).

**§505. Parental Consent**

A. ...

B. Consent for initial evaluations may not be construed as consent for initial placement described in Subsection A.

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:665 (April 2000), amended LR 29:871 (June 2003).

**§506. Complaint Management and Mediation**

A. Complaint procedures are established to resolve disputes regarding educational decisions between an LEA and a parent.

A.1. - B. ...

1. Mediation, which is voluntary on the part of both parties, shall be conducted by a qualified and impartial mediator trained in effective mediation techniques and assigned randomly by the department.

2. - 8. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:665 (April 2000), amended LR 29:871 (June 2003).

**§507. Impartial Due Process Hearing**

A. A parent or LEA may initiate a hearing on any of the matters described in §504 A.1 and 2. A parent of a child with a disability or the attorney representing the child, initiates a hearing by sending written notice to the department, which remains confidential. The LEA initiates a hearing by sending written notice to the parent and to the department. When a



hearing has been initiated, the department shall inform the parents of the availability of mediation.

1. The written notice to the department for a due process hearing shall include the student's name and address, the name of the school the student is attending, a description of the nature of the problem, of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the person requesting the hearing. The department must provide a model form to a parent to assist in filing a request for a due process hearing.

2. ...

3. The department may not deny or delay a parent's right to a due process hearing for failure to provide the required notice described above.

B. ...

1. The hearing shall be conducted at a time and place reasonably convenient to the parent and the student involved.

2. Any party shall have the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities.

B.3. - C.2. ...

3. be informed, upon request, of any free or low-cost legal and other relevant services if the parent requests the information or when either the parent or the LEA initiates a due process hearing; and

C.4. - D. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:666 (April 2000), amended LR 29:871 (June 2003).

#### **§508. Hearing Officer Appointment and Hearing Procedures**

A. - A.1.b. ...

c. No attorney who has represented an LEA or a parent in education litigation within three years may act as a hearing officer.

2. The department and each LEA shall maintain the list of qualified hearing officers. The list shall include a statement of the qualifications of each of the hearing officers. The department shall ensure that these hearing officers have successfully completed an in-service training program approved by the department. Additional in-service training shall be provided whenever warranted by changes in applicable legal standards or educational practices.

3. Appointments shall be for a period of one year.

B. ...

1. The hearing officer shall be assigned within five business days by the department, on a rotational basis from the department's list of certified hearing officers.

2. ...

3. If the parent or LEA has reasonable doubt regarding the impartiality of a hearing officer, written information shall be submitted to the department within three business days of receipt of the notice of the assigned hearing officer.

4. The department shall review any written challenge and provide a written decision and notice to the parent and LEA within three business days after receipt of the written challenge.

B.5. - C. 6. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:667 (April 2000), amended LR 29:872 (June 2003).

#### **§509. Appeal of the Hearing Decision**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:667 (April 2000), repealed LR 29:872 (June 2003).

#### **§510. The State Level Review Panel**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), repealed LR 29:872 (June 2003).

#### **§511. Appeal to the State Level Review Panel**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), repealed LR 29:872 (June 2003).

#### **§512. Appeal to State or Federal Court**

A. Any party aggrieved by the decision and the findings of the hearing officer has the right to bring a civil action in State or Federal court. The civil action shall be filed in State or Federal court of competent jurisdiction without regard to the amount of controversy within 90 days after notification of the decision or finding of the hearing officer is received by the aggrieved person, agency, or party.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), amended LR 29:872 (June 2003).

#### **§514. Student Status during Proceedings**

A. Except as provided in §519.K of the regulations during the pendency of any administrative or judicial proceeding regarding due process, the student involved shall remain in the current educational placement unless the parent and the LEA agrees otherwise.

B. ...

C. If the decision of a hearing officer agrees with the parent that a change of placement is appropriate, that placement shall be treated as an agreement between the state or the LEA and the parents for the purposes of Subsection A.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), amended LR 29:872 (June 2003).

#### **§515. Costs**

A. LEAs shall be responsible for paying administrative costs or reasonable expenses related to participation of LEA personnel in a hearing. The cost and expenses of the hearing officer and stenographic services shall be paid by the department in accordance with its policies and procedures.

B. - B.3. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), amended LR 29:872 (June 2003).

**§517. Confidentiality of Information**

A. - B.5. ...

C. In ensuring access rights, each LEA shall permit parents to inspect and review any educational records relating to their child, which are collected, maintained or used by the LEA under these regulations. The LEA shall comply with the request without unnecessary delay and before any meeting regarding an individualized education program or any hearing pursuant to §507 and §519.D-M of these regulations; in no case shall the time exceed 45 days after the request has been made. The LEA shall not destroy any education records if there is an outstanding request to inspect and review the records.

C.1. - M.1. ...

N. All rights of privacy accorded to parents shall be afforded to students with disabilities, taking into consideration the age of the child and type of severity of the disability.

1. ...

2. Rights accorded to parents under Part B of the IDEA and these regulations are transferred to a student who reaches the age of majority, consistent with §518 of these regulations.

O. State-mandated Compliance Monitoring includes the policies, procedures and sanctions the state shall use to ensure that the requirements of IDEACPart B and these regulations are met.

P. - P.2. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:669 (April 2000), amended LR 29:873 (June 2003).

**§518. Transfer of Parental Rights at the Age of Majority**

A. - A.3. ...

B. When a student with a disability reaches the age of majority and has not been interdicted or the subject of a tutorship proceeding, the student's parent may allege to the LEA that the student lacks the ability to provide informed consent with respect to his or her educational program. In the event that the parent makes such an allegation, the student has the right to dispute the parent's allegation, either orally or in writing, or by any other method of communication.

1. Any protest or objection to the parent's allegation shall result in the student's educational rights being transferred fully to the student at the age of majority, unconditionally. If the student makes no such dispute or objection, the parent shall retain the student's educational rights.

2. The student's position is final and unappealable; however, at any time the student may revoke his assent to his parents' retention of rights. Upon such revocation, the students' rights immediately vest with the student.

3. LEAs are required to document in the child's IEP that the parents and the student have been informed of the rights herein and that they have accepted or declined these rights. If the student and/or parent is unable to sign the appropriate section of the IEP reflecting this information, the

IEP team may complete that portion of the IEP on behalf of the student and/or parent, reflecting each party's position and acknowledging that the student and/or parent is unable to sign.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:670 (April 2000), amended LR 29:873 (June 2003).

**§519. Discipline Procedures for Students with Disabilities**

A. - B.2. ...

a. the student carries or possesses a weapon at school or at a school function under the jurisdiction of the state or an LEA; or

b. the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the state or an LEA.

C. ...

\* \* \*

*Weapon* has the meaning given the term *dangerous weapon* under Paragraph (2) of the first Subsection (g) of Sec 930 of Title 18, United States Code.

D. - D.1.c. ...

d. determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets all IAES requirements as set forth in Subsection G.

E. - E.1.a. ...

b. for behavior that is not a manifestation of the student's disability consistent with §519.H of these regulations; the student's IEP team shall determine the extent of which services are necessary to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the student's IEP.

E.2. - F.1. ...

2. If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation and modify the plan and its implementation as necessary, to address the behavior.

3. - 4.a. ...

G The interim alternative educational setting referred to in Paragraph B of this section shall be determined by the IEP team. Any interim alternative educational setting in which a student is placed under Paragraph B.2 and Subsection D of this Section shall:

1. ...

2. include services and modifications designed to address the behavior described in Paragraph B.2 and Subsection D and to prevent the behavior from recurring.

H. - H.4. ...

a. consider, in terms of the behavior subject to disciplinary action, all relevant information, the evaluation and diagnostic results, including the results or other relevant information supplied by the parent of the student; observation of the student; and the student's IEP and placement, and

4.b. - 5. ...

6. If the IEP team and other qualified personnel determine that the behavior is a manifestation of the student's disability, the disciplinary removal cannot occur,

unless the removal is in accordance with §519.B.2.(a) and (b) and §519 D of these regulations.

H.7. - I.3. ...

J. If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement and discipline, the parent may request a hearing.

1. The department, consistent with §507 and §508.B of these regulations, shall arrange for an expedited hearing in any case described in the above paragraph if a hearing is requested by a parent.

a. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the LEA has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of §519.H.5.

b. In reviewing a decision under §519.B.2 of these regulations to place a student in an interim alternative educational setting, the hearing officer shall apply the standards in §519.D of these regulations.

K. ...

1. If the parents request a hearing regarding a disciplinary action described in §519.B.2 or §519.D.1.a-d to challenge the interim alternative educational setting or the manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until expiration of the time period provided for in §519.B.2 or §519.D.1.a-d, whichever occurs first, unless the parent and the state or LEA agree otherwise.

2. If a student is placed in an interim alternative educational setting pursuant to §519B.2 and §519.D.1.a-d and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pending of any proceeding to challenge the proposed change in placement, the student shall remain in the current placement (student's placement prior to the interim alternative educational setting), except as provided in K.3 below.

3. ...

a. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in §519.D.1.a-d.

K.3.b. - L.4. ...

5. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA shall provide special education and related services in accordance with the provisions of these regulations including the requirements of §519.B-N and R.S. 17:1943.6.

M. - M.5. ...

6. The decisions on expedited due process hearings are appealable consistent with the procedures established at §512 of these regulations.

N. - N.2. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:670 (April 2000), amended LR 29:873 (June 2003).

**Chapter 6. Establishment and Operation of Special School District**

**§602. Program Approval**

A. Each educational program operated by SSD shall meet the standards for school approval.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:674 (April 2000), amended LR 29:874 (June 2003).

**§690. Instructions for Child Count**

A. ...

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education (IEP).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000), amended LR 29:874 (June 2003).

**Chapter 7. Responsibilities of State Board Special Schools**

**§711. Instructions for Child Count**

A. ...

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program (IEP).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000), amended LR 29:874 (June 2003).

**§716. Louisiana Schools for the Deaf and the Visually Impaired Alternative Placement**

A. ...

B. Upon receipt from a parent (as defined in Chapter 9 of these regulations) of an application for admission of his or her child, LSD or LSVI shall require, at a minimum, an individual evaluation for classification as having a hearing impairment (i.e., deaf, hard of hearing) or a visual impairment (i.e., blindness, partial sight) as a part of the application. LSD or LSVI shall notify the LEA of the parent/student domicile that the application has been made, in order to fulfill the provisions established in §709 of these regulations.

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000), amended LR 29:874 (June 2003).

**Chapter 8. Interagency Agreements**

**§830. Types of Interagency Agreements**

A. The department and SSD shall have agreements or promulgate regulations for interagency coordination with the Department of Health and Hospitals (DHH), the Department

of Social Services (DSS), and the Department of Public Safety and Corrections (DPS&C), and/or other state agencies and their sub-offices, where appropriate. LEAs shall have those agreements whenever necessary for the provisions of a free appropriate public education. The State School for the Deaf, State School for the Visually Impaired and the State Special Education Center, now under the auspices of SSD, shall have interagency agreements with the LEA in whose geographic area they are located; with each LEA that places a student in the day programs of that facility; with the regional state agencies; and with habilitation agencies with which they share students.

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 26:678 (April 2000), amended LR 29:874 (June 2003).

### **§861. DHH and the Department's Responsibilities under IDEA and the Louisiana Education of Children with Exceptionalities Act**

A. This regulation and the following regulations at §§861-870 control the legal relationship between the Louisiana Department of Health and Hospitals (DHH) and the Louisiana Department of Education (the department), for the interagency coordination of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941 et seq., and encompasses all offices, division, bureaus, units and programs at the state, regional and local levels with each department.

B. These regulations are promulgated to comply with the obligations imposed upon the state of Louisiana and its agencies at 20 U.S.C. §1412 and 34 CFR §300.142.

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 29:875 (June 2003).

### **§862. Definitions**

A. For the purposes of this Chapter, the following definitions apply.

**Educational Services** Call other services, including but not limited to academic services, extracurricular activities, transportation, related services for which DHH is not legally responsible, and any other service included on a student's IEP but not provided by DHH, through Medicaid or any other program operated by DHH, under any existing state or federal law.

**Eligibility Criteria for DHH Health and Medical Services** the criteria for individuals receiving a specific health or medical service provided by DHH.

**Family** the child's parents or legal guardians as well as surrogate parents and persons acting as a parent as defined by *Bulletin 1706 C Regulations for the Implementation of the Children with Exceptionalities Act*.

**IEP** Individualized Education Program, as defined in §904 herein.

**LEA** a local educational agency, as defined in §904 herein.

**Related Services** in addition to the definition of these terms in IDEA and Bulletin 1706, in the context of these regulations, the term means those services which DHH, through Medicaid or any other program operated by DHH, is required by any existing state or federal law to provide to a

qualified recipient in the state of Louisiana. *Related services* includes but is not limited to supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, medical services for diagnostic or evaluation purposes, and transition services.

**Services** any special education and/or related services as defined in IDEA and Bulletin 1706, Regulations for Implementation of the Children with Exceptionalities Act.

**Student** any individual between the ages of 3 and 22 years and is enrolled in a Louisiana Local Education Agency ("LEA") or is the responsibility of the department and/or the LEAs.

**Student with a Disability** as defined in §904 herein.

**Transition Services** Transition services, as defined in §904 herein.

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 29:875 (June 2003).

### **§863. Responsibility for Services**

A. In order to ensure that all services described in §864 of these regulations that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute, the following requirements are imposed on the department and DHH.

1. Agency Financial Responsibility. All relevant federal and state mandates apply. The department and DHH, as obligated under federal or state law, must use allocated federal, state and local funds to provide, pay or otherwise arrange for services on the IEP that are necessary to ensure each eligible student receives a free appropriate public education ("FAPE") as written on the IEP. The financial responsibility for these services shall be governed by all pertinent federal and state laws, including but not limited to 20 U.S.C. §1400 et seq., 34 CFR Parts 300, R.S. 17:1941 et seq., Louisiana Department of Education *Bulletin 1706*, 42 U.S.C. §1396 and 42 CFR Part 430.

a. If DHH is otherwise obligated under federal or state law, or assigned responsibility under DHH policy or pursuant to 34 CFR §300.142, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR §300.5 relating to assistive technology devices, 34 CFR §300.24 relating to related services, 34 CFR §300.28 relating to supplementary aids and services, and 34 CFR §300.29 relating to transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

b. DHH may not disqualify an eligible service for Medicaid reimbursement because it is on an IEP or because that service is provided in a school context or any other setting that is a most integrated setting or least restrictive environment in order to provide a free appropriate public education. DHH is required to provide all eligible services to the same extent the individual would receive these services under federal and state law and regulation without eligibility for IDEA.

c. The financial responsibility of DHH must precede the financial responsibility of the LEA or the state agency responsible for developing the student's IEP.

2. Conditions and Terms of Reimbursement. DHH will fund or provide services that are included on an IEP to the extent that such services are services that are funded or provided to individuals eligible under any federal or state program provided by DHH. If any program under the auspices of DHH fails to provide or pay for these special education and related services, the LEA and/or the department is responsible for providing or paying for these services. The department or the LEA will then claim reimbursement from DHH, having failed to provide or pay for these services. DHH is then required to reimburse the LEA or the department for the services that DHH is otherwise obligated to provide. DHH is required to fund or provide services that are included on an IEP to the extent that such services are services for which the individual is eligible under any federal or state program administered by DHH.

3. Interagency Disputes. Disputes relating to the provision of services pursuant to 20 U.S.C. §1400 et seq., and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941 et seq., must be addressed in the following manner.

a. If a family disputes the actions of an LEA, that family may either file a complaint with the department or file for a due process hearing, both as set out in Louisiana Bulletin 1706, Chapter 5, Procedural Safeguards. If a family disputes the actions of DHH and that family or student is a client of or eligible for DHH services, that dispute may be addressed through the DHH appeals process, as authorized in R.S. 46:107 or any other relevant state or federal statute or regulation.

b. If an LEA disputes the actions of the department, that LEA may file suit against the department only in the United States District Court for the Middle District of Louisiana or the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

c. If an LEA disputes the actions of DHH, as a Medicaid provider, that LEA may appeal through the DHH appeal process, as authorized in R.S. 46:107 or any other relevant state or federal statute or regulation.

d. An interagency dispute between DHH and the department, which involves either program or financial responsibility, will be referred to the Superintendent of Education and the Secretary of the Department of Health and Hospitals for mediation. If the dispute cannot be resolved in mediation, it will be referred to the Office of the Governor for resolution. If a dispute continues beyond these interventions, either DHH or the department may seek resolution from a court of competent authority.

e. During the pending of any dispute, a student's LEA bears full responsibility for program and/or financial obligations, to ensure that the student's IEP is implemented fully and that the student is receiving FAPE. If the LEA is unable or unwilling to provide FAPE, the department is responsible for those program and/or financial obligations.

4. Coordination of Services Procedures. The department and DHH shall coordinate services to students with disabilities by complying with procedures that are

specific to each agency, including, but not limited to, the following.

a. The department bears the following responsibilities:

i. maintain the Child Search system under Part B of IDEA, specifically, the identification, location and evaluation of students from 3 through 21 years of age who are suspected of having a disability;

ii. provide DHH with a listing of its primary contacts and service description for the Child Search Program on a parish basis for DHH to make available to its regional and parish offices;

iii. ensure that each eligible student/student will receive a timely, appropriate multidisciplinary evaluation. In order to reduce the duplication of effort, services and paperwork, the LEAs will implement a policy to ensure evaluations conducted by programs in DHH are utilized in the multidisciplinary evaluation of students suspected of being disabled and in the re-evaluation of students;

iv. ensure that each eligible student with a disability receives a free appropriate public education ("FAPE") in accordance with an IEP. FAPE includes special education and related services;

v. ensure that each eligible student has an IEP developed and implemented in accordance with IDEA;

vi. monitor the provision of services on IEPs through assurances with LEAs; and

vii. monitor the implementation of the IEP and assure that resources necessary for the implementation of services on the IEP will be made available through federal or state funds.

b. DHH bears the following responsibilities:

i. provide access to medical services offered by DHH through application for such services at DHH office locations in all regions of the state where the students currently reside. The student must meet the eligibility criteria for the medical services for which the student is applying. Establishing eligibility and need for services is the responsibility of DHH;

ii. DHH shall not reduce the medical services, which it would be required to provide to a student with a disability solely because those services are included on IEP;

iii. refer students to the LEA upon suspicion of a disability. DHH personnel will share available information on students receiving joint services from the department and DHH with the proper written consent;

iv. provide information at the consent and request of a parent; and

v. ensure that a student with a disability can access Medicaid services for which the student is eligible. DHH policy and procedures shall not preclude an LEA from enrolling as a provider in the Medicaid program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:875 (June 2003).

#### **§864. Obligations of DHH**

A. If DHH is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to §§861-870 herein, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR

§300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.24 relating to related services, §300.28 relating to supplementary aids and services, and §300.29 relating to transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

B. DHH may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

C. If DHH fails to provide or pay for the special education and related services described in Paragraph A hereinabove, the LEA (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA or state agency may then claim reimbursement for the services from DHH, having failed to provide or pay for these services, and DHH shall reimburse the LEA or state agency in accordance with these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:876 (June 2003).

#### **§865. Students with Disabilities Who are Covered by Public Insurance**

A. An LEA may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under this agreement, as permitted under the public insurance program, except as follows.

1. With regard to services required to provide FAPE to an eligible student under this part, the LEA:

a. may not require parents to sign up for or enroll in public insurance programs in order for their student to receive FAPE under Part B of the IDEA;

b. may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to §867.B of these regulations, may pay the cost that the parent otherwise would be required to pay; and

c. may not use a student's benefits under a public insurance program if that use would:

i. decrease available lifetime coverage or any other insured benefit;

ii. result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;

iii. increase premiums or lead to the discontinuation of insurance; or

iv. risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

#### **§866. Students with Disabilities Who are Covered by Private Insurance**

A. With regard to services required to provide FAPE to an eligible student under this Chapter, an LEA may access a

parent's private insurance proceeds only if the parent provides informed consent consistent with 34 CFR §300.500(b)(1).

B. Each time the LEA proposes to access the parent's private insurance proceeds, it must:

1. obtain parent consent in accordance with Subsection A of this Section; and

2. inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

#### **§867. Use of Part B Funds**

A. If an LEA or state agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the LEA may use its Part B funds to pay for the service.

B. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

#### **§868. Proceeds from Public or Private Insurance**

A. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR §80.25.

B. If an LEA spends reimbursements from federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions in 34 CFR §§300.154 and 300.231.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

#### **§869. Limitations of These Requirements**

A. No provision of this Chapter should be construed to alter the requirements imposed on DHH or any other agency administering a public insurance program by federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act or any other public insurance program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

#### **§870. General Provisions Governing §§861-870**

A. Confidentiality of Information. In accordance with federal and state law, information on a student's disabilities is confidential. For the purposes of identification, location, evaluation, development and implementation of the IEP, information and records on mutually served students may be exchanged between the department and DHH with the written, informed consent of the parent(s) of each student. The method of exchanging information may be electronic or written. When a specific student or family is identified, the exchange must be written with proper consent obtained.

B. Ancillary Agreements. Regional and/or local agreements may be developed and implemented between the respective programs within the department and DHH for the purposes of determining and identifying interagency coordination to promote the coordination of services and the timely and appropriate delivery of services to each eligible student and family. The services may be provided either directly, through a contract or other arrangement. These agreements are considered binding for the programs under the auspices of the department and DHH only after written approval of such regional or local agreements by the Secretary of DHH and the Division Director of Special Populations in the department, respectively.

C. Joint Coordination and Monitoring. DHH and the department are required to develop jointly state level annual goals that are based on needs/data. DHH and the department are required to evaluate jointly the overall effectiveness of these goals. Each department is required to designate a liaison at the state level to coordinate the activities and monitor the compliance of these regulations. Each agency is required to appoint an interagency committee to review and evaluate the effectiveness of these regulations; facilitate their implementation; and make recommendations for revisions as deemed appropriate.

D. Modifications to these Requirements. As the lead agency for implementation of the Louisiana Education of Children with Exceptionalities Act and the Individuals with Disabilities Education Act in Louisiana, the department is the sole agency with authority to promulgate regulations pursuant to those statutes and no modification to these requirements shall be made by any other agency by regulation, policy or otherwise, without the express written consent of the department.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

## Chapter 9. Definitions

### §904. Definitions

*Adapted Physical Education* C specially designed physical education for not only students with disabilities who may not safely or successfully engage in unrestricted participation in the vigorous activities of the regular physical education program on a full-time basis but also for students with disabilities, ages 3 through 5, who meet the mandated criteria. The delivery of adapted physical education required by an IEP shall meet the following conditions:

1. evaluation and instruction are provided by a certified adapted physical education teacher;
2. only students with disabilities whose need is documented in accordance with mandated criteria for eligibility are included in the caseload;
3. the caseload is in accordance with the pupil/teacher ratios listed in Chapter 10 of these regulations.

\*\*\*

*Alternate Assessment* C a substitute approach used in gathering information on the performance and progress of students who do not participate in typical state assessments. Under these regulations, alternate assessments shall be used to measure the performance of a relatively small population of students with disabilities who are unable to participate in the general statewide assessment system, even with accommodations and modifications.

\*\*\*

*Certificate of Achievement* C an exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below. The receipt of a Certificate of Achievement shall not limit a student's continuous eligibility for services under these regulations unless the student has reached the age of 22.

1. The student has a disability under the mandated criteria.
2. The student has participated in the Louisiana Alternate Assessment Program (LAA).
3. ...
4. The student has met attendance requirements.
5. - 6. ...

*Certificate of Achievement* C *Provisional Eligibility Criteria* C an exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below.

1. Eligible students are those:
  - a. who have disabilities under the mandated criteria;
  - 1.b. - 2.b. ...
  - c. The student has met attendance requirements according to the *School Administrator's Handbook, Bulletin 741*.
  - d. - f. ...

\*\*\*

*Evaluation* C is a multidisciplinary evaluation of a child/student, ages 3 through 21 years, in all areas of suspected disability through a systematic process of review; examination; interpretation; and analysis of screening data, developmental status, intervention efforts, interviews, observations, and test results, as required; and other assessment information relative to the predetermined criteria.

\*\*\*

*Extended School Year (ESY) Services* C is the provision of special education and related services to students with disabilities beyond the normal school year of the LEA. All students (ages 3 through 21) classified as having a disability with a current evaluation and IEP are to be screened annually by the ESY screening date to determine eligibility for ESY. Services are to be provided in accordance with the student's IEP once eligibility is determined.

\*\*\*

*Generic Class* C an instructional setting (self-contained or resource).

1. - 1.b. ...
2. The instruction is provided by a special education teacher with appropriate certification.
3. - 4. ...

\*\*\*

### *Individualized Family Service Plan (IFSP)* C

1. a written plan for providing early intervention services for eligible children and their families. The determination of the most appropriate early intervention services, including any modifications in placement, service delivery, service providers or early intervention services, is accomplished through the development of the IFSP. The IFSP shall:

- a. be developed jointly by the family and appropriate qualified personnel, including family service

coordinators involved in the provision of early intervention services;

b. be based on the multidisciplinary evaluation and assessment of the child and family;

c. include the services necessary to enhance the development of the child and the capacity of the family to meet the special needs of their child;

d. continue until the child transitions out of early intervention, either to other appropriate service providers at age 3, or at such time that the family and multidisciplinary professionals determine that services are no longer necessary; or the family no longer desires early intervention services;

e. identify the location of the early intervention services to be provided in natural environments, including the home and community settings, in which children without special needs would participate.

2. If there is a dispute between agencies regarding the development or the implementation of the IFSP, the Lead Agency is responsible for taking the necessary actions to resolve the dispute or assign responsibility for developing or implementing the IFSP.

*Infants and Toddlers with Disabilities*Cchildren between the ages of birth and 3 years of age who have been determined eligible for early intervention services.

\*\*\*

*Occupational Therapy*Cas a related service, means mandated services provided by a qualified occupational therapist.

\*\*\*

*Physical Therapy*Cas a related service means mandated services provided by a qualified physical therapist.

\*\*\*

*Related Services*Ctransportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education. Related services include speech/language pathology and audiological services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in students, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

\*\*\*

*School Health Services*Cas a related services means services provided by a certified school nurse or other qualified person.

\*\*\*

*Specific Learning Disability*Ca severe and unique learning problem characterized by significant difficulties in the acquisition, organization, or expression of specific academic skills or concepts. This learning problem is typically manifested in school functioning as significantly poor performance in such areas as reading, writing, spelling, arithmetic reasoning or calculation, oral expression or comprehension, or the acquisition of basic concepts. The term includes such conditions as attention deficit disorders, perceptual disabilities or process disorders, minimal brain dysfunction, dyslexia, developmental aphasia, or sensorimotor dysfunction, when consistent with the

mandated criteria. The term does not apply to students who have learning problems primarily the result of visual, hearing, or motor impairments; of mental disabilities; of an emotional disturbance; of lack of instruction in reading or mathematics; of limited English proficiency; or of economic, environmental, or cultural disadvantage.

\*\*\*

*Student with a Disability*Ca student evaluated in accordance with §§430-436 of these regulations and determined as having one of the disability categories and, by reason of that disability, needing special education and related services.

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:679 (April 2000), amended LR 29:878 (June 2003).

**Chapter 10. State Program Rules for Special Education**

**§1001. Pupil/Teacher, Pupil/Speech/Language Pathologist, and Pupil Appraisal Ratios for Public Education**

A. - 6. ...

7. Repealed. (Reserved for future use.)

8. - 12. ...

13. Pupil appraisal members shall be employed by LEAs at the rate listed below. LEAs may substitute one pupil appraisal for another provided that all pupil appraisal services are provided in accordance with these regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:687 (April 2000), amended LR 29:879 (June 2003).

Weegie Peabody  
Executive Director

0306#017

**RULE**

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

Scholarship/Grant Programs  
(LAC 28:IV.301, 701, 805, 1703, and 1705)

The Louisiana Student Financial Assistance Commission (LASFAC) amends its Scholarship/Grant Rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

**Title 28  
EDUCATION**

**Part IV. Student Financial AssistanceC Higher Education Scholarship and Grant Programs**

**Chapter 3. Definitions**

**§301. Definitions**

\*\*\*

*Program Year (Non-Academic Program)*Cthe schedule of semesters or terms during a year leading to a vocational or technical education certificate or diploma or a non-academic undergraduate degree for such programs offered by eligible colleges and universities, beginning with the fall semester or



term, including the winter term, if applicable, and concluding with the spring semester or term or the equivalent schedule at an institution which operates on units other than semesters or terms. Enrollment in a summer term, semester or session is not required to maintain eligibility for an award.

*Qualified Summer Session* Those summer sessions for which the student's institution certifies that:

1. the summer session is required in the student's degree program for graduation and the student enrolled for at least the minimum number of hours required for the degree program for the session; or

2. the student can complete his program's graduation requirements in the summer session; or

3. the course(s) taken during the summer session is required for graduation in the program in which the student is enrolled and is only offered during the summer session; or

4. the course(s) taken during the summer session is in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003).

## **Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards**

### **§701. General Provisions**

A. - E.1. ...

2. The TOPS Performance Award provides a \$400 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

3. The TOPS Honors Award provides an \$800 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and each program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve

quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

4. - 5.a. ...

b. In a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree receive an amount equal to the average award amount (TOPS-Tech), as defined in §301, plus any applicable stipend, prorated by two semesters, three quarters, or equivalent units in each program year (non-academic program). The stipend will be paid for each qualified summer session, semester, quarter, term or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

E.6. - 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 by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999), LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26: 1995, 2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:880 (June 2003).

## **Chapter 8. TOPS-TECH Award**

### **§805. Maintaining Eligibility**

A. - A.4. ...

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 program year (non-academic program), unless granted an exception for cause by LASFAC; and

A.6. - 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 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:880 (June 2003).

## **Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools**

### **§1703. High School's Certification of Student Achievement**

A. Responsibility for Reporting and Certifying Student Performance

1. Through the 2002 academic year (high school), responsibility for the identification and certification of high school graduates who meet the academic qualifications for a TOPS award is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

2. Commencing with the 2003 academic year (high school), responsibility for the submission and certification of courses attempted and the grades earned for high school graduates is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

3. The Louisiana Department of Education shall certify to LASFAC the names of students who are enrolled in and have completed all mandatory requirements through the twelfth grade level of a state-approved home study program.

**B. Procedures for Reporting and Certifying Student Performance**

1.a. Through the 2002 academic year (high school), the responsible high school authority shall record student performance on the form provided by LASFAC or in an electronic format pre-approved by LASFAC. The certification form shall be completed, certified and returned to LASFAC by the deadline specified on the form.

b. Commencing with the 2003 academic year (high school), the responsible high school authority shall submit the required student information in a standard electronic format approved by LASFAC.

2.a. Through the 2002 academic year (high school), the certification form shall contain, but is not limited to, the following reportable data elements:

i. student's name, address, phone number and social security number;

ii. month and year of high school graduation;

iii. final cumulative high school grade point average for all courses attempted, converted to a maximum 4.00 scale, if applicable (Note: Beginning with students graduating in 2002-2003, the cumulative high school grade point average will be calculated by using only grades obtained in completing the core curriculum.); and

iv. through the graduating class of the academic year (high school) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended. After the graduating class of the academic year (high school) 2002-2003, core unit requirements may not be waived.

b. Commencing with the 2003 academic year (high school), certification shall contain, but is not limited to, the following reportable data elements:

i. student's name and social security number;

ii. month and year of high school graduation;

iii. the course code for each course completed;

iv. the grade for each course completed;

v. the grading scale for each course reported; and

vi. through the graduating class of the academic year (high school) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended. After the graduating class of the academic year (high school) 2002-2003, core unit requirements may not be waived.

3. Through the 2002 academic year (high school), the responsible high school authority shall certify to LASFAC the final cumulative high school grade point average of each applicant and that average shall be inclusive of grades for all courses attempted and shall be computed and reported on a maximum 4.00 grading scale.

a. The following grading conversion shall be used to report the applicant's cumulative high school grade point average:

i. letter grade A = 4 quality points;

ii. letter grade B = 3 quality points;

iii. letter grade C = 2 quality points;

iv. letter grade D = 1 quality point.

b. Schools which award more than 4 quality points for a course must convert the course grade to a maximum 4.00 scale using the formula described in the example that follows. (In this example, the school awards one extra quality point for an honors course.)

i. Example: an applicant earned a C in an Honors English IV course and received 3 out of the 5 possible quality points that could have been awarded for the course.

ii. In converting this course grade to a standard 4.00 maximum scale, the following formula must be used:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying,

$$5X = 12; X = 2.40$$

iii. In this example, the quality points for this Honors English IV course should be recorded as 2.40 when the school calculates and reports the student's cumulative high school grade point average.

4. Commencing with the 2003 academic year (high school), LASFAC shall determine whether high school graduates have completed the core curriculum and compute the TOPS cumulative high school grade point average for each such graduate using a maximum 4.00 grading scale. Grades awarded on other than a maximum 4.00 scale shall be converted to a maximum 4.00 scale.

C. Certifying 1998 graduates for the TOPS performance award. 1998 graduates who are ranked in the top five percent

of their graduating class in accordance with §1703 shall be credited with having completed the core curriculum for purposes of the TOPS; however, only those meeting the following criteria shall be eligible for the performance award by LASFAC:

1. those students who have attained a final cumulative high school grade point average of at least a 3.50 on a 4.00 maximum scale; and

2. an ACT score of at least 23.

D. Certification.

1. Through the 2002 academic year (high school), the high school headmaster or principal or designee shall certify that:

a. all data supplied on the certification form are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASFAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

c. the school under the principal's jurisdiction shall reimburse LASFAC for the amount of a program award which was disbursed on behalf of a graduate of the school, when it is subsequently determined by audit that the school incorrectly certified the graduate.

2. Commencing with the 2003 academic year (high school), the submission of the required data by the high school headmaster or principal or designee shall constitute a certification that:

a. all data reported are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

3. Commencing with the 2003 academic year (high school), if a student is determined to be eligible for a TOPS Award based on data that is incorrect and the student was in fact ineligible for a TOPS award or the level awarded, the high school must reimburse LASFAC for the amount paid in excess of what the student was eligible for.

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 24:643 (April 1998), amended LR 24:1912 (October 1998), LR 25:258 (February 1999), LR 26:1998 (September 2000), LR 26:2269 (October 2000), LR 27:1863 (November 2001), LR 29:880 (June 2003).

**§1705. Notification of Certified Students**

A. High schools are required to present a certificate of achievement during the graduation ceremony or other school reception to students qualifying as recipients of TOPS performance and honors awards.

B. High schools are required to invite members of the Louisiana Legislature representing the school's district to attend the ceremony or reception and to make the presentation awarding the endorsed certificates of achievement.

C.1. Through the 2002 academic year (high school), if the certifying authority elects to notify students of their certification, then the following disclaimer shall be included in any communication to the student: "Although you have been certified as academically eligible for a Tuition Opportunity Program for Students (TOPS) Award, you must satisfy all of the following conditions to redeem a scholarship under this program:

a. you must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and

b. you must be accepted for enrollment by an eligible Louisiana college and be registered as a full-time undergraduate student; and

c. you must annually apply for federal student aid, if eligible for such aid, by the deadline required for consideration for state aid; and

d. you must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

2. Commencing with the 2003 academic year (high school), if the certifying authority elects to notify students of their potential eligibility for an award, then the following disclaimer shall be included in any communication to the student: "Although it appears that you have satisfied the academic requirements for a Tuition Opportunity Program for Students (TOPS) Award based on this school's review of the core curriculum courses you have completed and calculation of your TOPS cumulative high school grade point average, you must satisfy all of the following conditions to redeem a scholarship under this program:

a. the Louisiana Student Financial Assistance Commission (LASFAC) must determine that you have in fact completed the TOPS core curriculum courses;

b. LASFAC must determine that your TOPS cumulative high school grade point average based on the TOPS core curriculum meets the statutory requirements;

c. you must be a Louisiana resident as defined by LASFAC;

d. you must be accepted for enrollment by an eligible Louisiana postsecondary institution and be registered as a full-time undergraduate student no later than the next semester following the first anniversary of your graduation from high school;

e. you must apply for federal student aid, if eligible for such aid, by the deadline required for consideration for consideration for state; and

f. you must have met all academic and nonacademic requirements and be officially notified of your award by LASFAC."

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 24:644 (April 1998), amended LR 24:1913 (October 1998), repromulgated LR 27:1864 (November 2001), amended LR 29:126 (February 2003), LR 29:882 (June 2003).

George Badge Eldredge  
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**RULE**  
**Office of the Governor**  
**Division of Administration**  
**Office of Group Benefits**

Managed Care Option (MCO)CPlan of Benefits  
(LAC 32:IX.Chapters 1-7)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB has adopted an entire new Plan of Benefits for the Office of Group Benefits, designating it as the Managed Care Option (MCO) Plan of Benefits. The MCO Plan of Benefits sets forth the terms and conditions pursuant to which eligibility and benefit determinations are made with regard to the self-insured health and accident benefits plan, designated as the MCO Plan, provided for state employees and their dependents pursuant to R.S. 42:851 et seq. Effective July 1, 2003, LAC Title 32, Part IX, entitled "Health Maintenance OrganizationsCHMO" is repealed in its entirety and replaced by a new Part IX, entitled "Managed Care Option (MCO)CPlan of Benefits," as follows.

**Title 32**

**EMPLOYEE BENEFITS**

**Part IX. Managed Care Option (MCO)CPlan of Benefits**  
**Chapter 1. Eligibility**

**§101. Persons to be Covered**

NOTE: Eligibility requirements apply to all participants in the program, whether in the PPO plan, the EPO plan, the MCO Plan, or an HMO plan.

**A. Employee Coverage**

1. *Employee* (see §601).  
2. Husband and Wife, both *Employees*. No one may be enrolled simultaneously as an *employee* and as a *dependent* under the plan, nor may a *dependent* be covered by more than one *employee*. If a covered spouse chooses at a later date to be covered separately, and is eligible for coverage as an *employee*, that person will be a covered *employee* effective the first day of the month after the election of separate coverage. The change in coverage will not increase the benefits.

3. **Effective Dates of Coverage, New Employee.** Coverage for each *employee* who completes the applicable enrollment form and agrees to make the required payroll contributions to his *participant employer* is to be effective as follows.

a. If employment begins on the first day of the month, coverage is effective the first day of the following month.

b. If employment begins on the second day of the month or after, coverage is effective the first day of the second month following employment.

c. *Employee coverage* will not become effective unless the *employee* completes an application for coverage within 30 days following the date of employment. An

*employee* who completes an application after 30 days following the date of employment will be considered an overdue applicant.

4. **Re-Enrollment, Previous Employment**

a. An *employee* whose employment terminated while covered, who is re-employed within 12 months of the date of termination will be considered a re-enrollment, previous employment applicant. A re-enrollment previous employment applicant will be eligible for only that classification of coverage (*employee*, *employee* and one *dependent*, family) in force on the effective date of termination.

b. If an *employee* acquires an additional *dependent* during the period of termination, that *dependent* may be covered if added within 30 days of re-employment.

5. **Members of Boards and Commissions.** Except as otherwise provided by law, members of boards or commissions are not eligible for participation in the plan. This Section does not apply to members of school boards or members of state boards or commissions who are defined by the *participant employer* as full time *employees*.

6. **Legislative Assistants.** Legislative assistants are eligible to participate in the plan if they are declared to be full-time *employees* by the *participant employer* and have at least one year of experience or receive at least 80 percent of their total compensation as legislative assistants.

7. **Pre-Existing Condition (PEC)CNew employees** (on and after July 1, 2001).

a. The terms of the following paragraphs apply to all eligible *employees* whose employment with a *participant employer* commences on or after July 1, 2001, and to the *dependents* of such *employees*.

b. The program may require that such applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

c. Medical expenses incurred during the first 12 months following enrollment of *employees* and/or *dependents* under the plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

d. If the *covered person* was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (*HIPAA*), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

**B. Retiree Coverage**

1. **Eligibility**

a. *Retirees of participant employers* are eligible for *retiree* coverage under this Plan.

b. An *employee* retired from a *participant employer* may not be covered as an *employee*.

c. *Retirees* are not eligible for coverage as overdue applicants.

2. Effective Date of Coverage. *Retiree* coverage will be effective on the first day of the month following the date of retirement, if the *retiree* and *participant employer* have agreed to make and are making the required contributions.

C. Dependent Coverage

1. Eligibility. A *dependent* of an eligible *employee* or *retiree* will be eligible for *dependent coverage* on the later of the following dates:

- a. the date the *employee* becomes eligible;
- b. the date the *retiree* becomes eligible;
- c. the date the covered *employee* or covered *retiree*

acquires a *dependent*.

2. Effective Dates of Coverage

a. *Dependents of Employees*. Coverage for *dependents* will be effective on the date the *employee* becomes eligible for *dependent coverage*.

b. *Dependents of Retirees*. Coverage for *dependents* of *retirees* will be effective on the first day of the month following the date of retirement if the *employee* and his *dependents* were covered immediately prior to retirement. Coverage for *dependents* of *retirees* first becoming eligible for *dependent coverage* following the date of retirement will be effective on the date of marriage for new spouses, the date of birth for newborn *children*, or the *date acquired* for other classifications of *dependents*, if application is made within 30 days of the date of eligibility.

D. Pre-Existing Condition (PEC) Overdue Application

1. The terms of the following paragraphs apply to all eligible *employees* who apply for coverage after 30 days from the date the *employee* became eligible for coverage and to all eligible *dependents* of *employees* and *retirees* for whom the application for coverage was not completed within 30 days from the *date acquired*. The provisions of this Section do not apply to military reservists or national guardsmen ordered to active duty who return to state service and reapply for coverage with the *program* within 30 days of the date of reemployment. Coverage will be reinstated effective on the date of return to state service. The effective date of coverage will be:

a. the first day of the month following the date of receipt by the *program* of all required forms prior to the fifteenth of the month;

b. the first day of the second month following the date of the receipt by the *program* of all required forms on or after the fifteenth of the month.

2. The *program* will require that all overdue applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

3. Medical expenses incurred during the first 12 months following enrollment of *employees* and/or *dependents* under the plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

4. If the *covered person* was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (*HIPAA*), credit will be given for previous coverage that occurred without a break of 63 days

or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

E. Special Enrollments *CHIPAA*. In accordance with *HIPAA*, certain eligible persons for whom the option to enroll for coverage was previously declined, and who would be considered overdue applicants, may enroll by written application to the *participant employer* under the following circumstances, terms and conditions for special enrollments.

1. Loss of Other Coverage. Special enrollment will be permitted for *employees* or *dependents* for whom the option to enroll for coverage was previously declined because the *employees* or *dependents* had other coverage which has terminated due to:

a. loss of eligibility through separation, divorce, termination of employment, reduction in hours, or death of the *plan* participant; or

b. cessation of *participant employer* contributions for the other coverage, unless the *participant employer* contributions were ceased for cause or for failure of the individual participant to make contributions; or

c. the *employee* or *dependent* having had *COBRA* continuation coverage under a *group health plan* and the *COBRA* continuation coverage has been exhausted, as provided in *HIPAA*.

2. After Acquiring *Dependents*. Special enrollment will be permitted for *employees* or *dependents* for whom the option to enroll for coverage was previously declined when the *employee* acquires a new *dependent* by marriage, birth, adoption, or placement for adoption.

a. A special enrollment application must be made within 30 days of the termination date of the prior coverage or the date the new *dependent* is acquired. Persons eligible for special enrollment for which an application is made more than 30 days after eligibility will be considered overdue applicants subject to a pre-existing condition limitation.

b. The effective date of coverage shall be:

i. for loss of other coverage or marriage, the first day of the month following the date of receipt by the *program* of all required forms for enrollment;

ii. for birth of a *dependent*, the date of birth;

iii. for adoption, the date of adoption or placement for adoption.

c. Special enrollment applicants must complete acknowledgment of pre-existing condition and statement of physical condition forms.

d. Medical expenses incurred during the first 12 months that coverage for the special enrollee is in force under this *plan* will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care or *treatment* was recommended or received during the 6-month period immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

e. If the special enrollee was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in *HIPAA*, the duration of the prior coverage will be credited against the initial 12-month period used by the *program* to exclude benefits for a pre-existing condition if the termination under the prior coverage

occurred within 63 days of the date of coverage under the *plan*.

F. *Retirees Special Enrollment*. *Retirees* will not be eligible for special enrollment, except under the following conditions:

1. retirement began on or after July 1, 1997;
2. the *retiree* can document that creditable coverage was in force at the time of the election not to participate or continue participation in the *plan*;
3. the *retiree* can demonstrate that creditable coverage was maintained continuously from the time of the election until the time of requesting special enrollment;
4. the *retiree* has exhausted all *COBRA* and/or other continuation rights and has made a formal request to enroll within 30 days of the loss of other coverage; and
5. the *retiree* has lost eligibility to maintain other coverage through no fault of his/her own and has no other creditable coverage in effect.

G. Health Maintenance Organization (HMO) Option

1. In lieu of participating in the *plan*, *employees* and *retirees* may elect coverage under an approved HMO.

2. New *employees* may elect to participate in an HMO during their initial period of eligibility. Each HMO will hold an annual enrollment period for a coverage effective date of July 1. Transfer of coverage from the *plan* to the HMO or vice-versa will only be allowed during this annual enrollment period. Transfer of coverage will also be allowed as a consequence of the *employee* being transferred into or out of the HMO geographic service area, with an effective date of the first day of the month following transfer.

3. If a *covered person* has elected to transfer coverage, but is hospitalized on July 1, the *plan*, which is providing coverage prior to July 1, will continue to provide coverage up to the date of discharge from the *hospital*.

H. *Medicare Risk HMO Option for Retirees*. *Retirees* who are eligible to participate in a *Medicare Risk HMO plan* who cancel coverage with the *program* upon enrollment in a *Medicare Risk HMO plan* may re-enroll in the *program* upon withdrawal from or termination of coverage in the *Medicare Risk HMO plan*, at the earlier of the following:

1. during the month of November, for coverage effective January 1; or
2. during the next annual enrollment, for coverage effective at the beginning of the next *plan* year.

I. *Tricare for Life Option for Military Retirees*. *Retirees* eligible to participate in the *Tricare for Life (TFL) option* on and after October 1, 2001 who cancel coverage with the *program* upon enrollment in *TFL* may re-enroll in the *program* in the event that the *TFL option* is discontinued or its benefits significantly reduced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:883 (June 2003).

### **§103. Continued Coverage**

A. *Leave of Absence*. If an *employee* is allowed an approved leave of absence by his *participant employer*, he may retain his coverage for up to one year, if the premium is paid. Failure to do so will result in cancellation of coverage. The *program* must be notified by the *employee* and the *participant employer* within 30 days of the effective date of the leave of absence.

### **B. Disability**

1. *Employees* who have been granted a waiver of premium for basic or supplemental life insurance prior to July 1, 1984 may continue health coverage for the duration of the waiver if the *employee* pays the total contribution to the *participant employer*. *Disability* waivers were discontinued effective July 1, 1984.

2. If a *participant employer* withdraws from the *plan*, health and life coverage for all *covered persons* will terminate as of the effective date of withdrawal.

C. *Surviving Dependents/Spouse*. The provisions of this Section are applicable to surviving *dependents* who elect to continue coverage following the death of an *employee* or *retiree*. On or after July 1, 1999, eligibility ceases for a *covered person* who becomes eligible for coverage in a *group health plan* other than *Medicare*. Coverage under the *group health plan* may be subject to *HIPAA*.

1. Benefits under the *plan* for covered *dependents* of a deceased covered *employee* or *retiree* will terminate on the last day of the month in which the *employee's* or *retiree's* death occurred unless the surviving covered *dependents* elect to continue coverage.

a. The surviving legal spouse of an *employee* or *retiree* may continue coverage until the surviving spouse becomes eligible for coverage in a *group health plan* other than *Medicare*.

b. The surviving *children* of an *employee* or *retiree* may continue coverage until they are eligible for coverage under a *group health plan* other than *Medicare*, or until attainment of the termination age for *children*, whichever occurs first.

c. Surviving *dependents/spouse* will be entitled to receive the same *participant employer* premium contributions as *employees* and *retirees*.

d. Coverage provided by the civilian health and medical program of the uniform services will not be sufficient to terminate the coverage of an otherwise eligible surviving legal spouse or a *dependent child*.

2. A surviving spouse or *dependent* cannot add new *dependents* to continued coverage other than a child of the deceased *employee* born after the *employee's* death.

3. *Participant Employer/Dependent Responsibilities*

a. It is the responsibility of the *participant employer* and surviving covered *dependent* to notify the *program* within 60 days of the death of the *employee* or *retiree*.

b. The *program* will notify the surviving *dependents* of their right to continue coverage.

c. Application for continued coverage must be made in writing to the *program* within 60 days of receipt of notification, and premium payment must be made within 45 days of the date continued coverage is elected for coverage retroactive to the date coverage would have otherwise terminated.

d. Coverage for the surviving spouse under this Section will continue until the earliest of the following events occurs:

- i. failure to pay the applicable premium;
- ii. death of the surviving spouse;
- iii. on or after July 1, 1999, becomes eligible for coverage under a *group health plan* other than *Medicare*.

e. Coverage for a surviving *dependent* child under this Section will continue until the earliest of the following events:

- i. failure to pay the applicable premium;
- ii. on or after July 1, 1999, becomes eligible for coverage under any *group health plan* other than *Medicare*;
- iii. the attainment of the termination age for *children*.

D. *Over-Age Dependents*. If an unmarried, never married *dependent* child is incapable of self-sustaining employment by reason of mental retardation or physical incapacity and became incapable prior to the termination age for *children* and is dependent upon the covered *employee* for support, the coverage for the *dependent* child may be continued for the duration of incapacity.

1. Prior to attainment of age 21, the *program* must receive documentation for *dependents* who are mentally retarded or who have a physical incapacity.

2. For purposes of this Section, mental illness does not constitute mental retardation.

3. The *program* may require that the covered *employee* submit current proof from a licensed medical doctor of continued mental retardation or physical incapacity as often as it may deem necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:885 (June 2003).

## §105. COBRA

### A. Employees

1. Benefits under this *plan* for a covered *employee* will terminate on the last day of the calendar month during which employment is terminated voluntarily or involuntarily, the *employee* no longer meets the definition of an *employee* or coverage under a leave of absence expires unless the covered *employee* elects to continue at the *employee's* own expense. *Employees* terminated for gross misconduct are not eligible for *COBRA*.

2. It is the responsibility of the *participant employer* to notify the *program* within 30 days of the date coverage would have terminated because of any of the foregoing events and the *program* will notify the *employee* within 14 days of his or her right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of the date of notification and premium payment must be made within 45 days of the date the *employee* elects continued coverage, for coverage retroactive to the date coverage would have otherwise terminated. Coverage under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 18 months from the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition limitation.

### B. Surviving Dependents

1. Benefits for covered surviving *dependents* of an *employee* or *retiree* will terminate on the last day of the month in which the *employee's* or *retiree's* death occurs, unless the surviving covered *dependents* elect to continue coverage at his/her own expense.

2. It is the responsibility of the *participant employer* or surviving covered *dependents* to notify the *program* within 30 days of the death of the *employee* or *retiree*. The *program* will notify the surviving *dependents* of their right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of the date of notification. Premium payment must be made within 45 days of the date the continued coverage was elected, retroactive to the date coverage would have terminated.

a. Coverage for the surviving *dependents* under this Section will continue until the earliest of the following:

- i. failure to pay the applicable premium;
- ii. death of the surviving spouse;
- iii. entitlement to *Medicare*;
- iv. coverage under a *group health plan*, except when subject to a pre-existing condition limitation.

b. Coverage for a surviving *dependent* child under this Section will continue until the earliest of the following:

- i. failure to pay the applicable premium;
- ii. 36 months beyond the date coverage would have terminated;
- iii. entitlement to *Medicare*;
- iv. coverage under a *group health plan*, except when subject to a pre-existing condition.

### C. Divorced Spouse

1. Coverage under this *plan* will terminate on the last day of the month during which dissolution of the marriage occurs by virtue of a legal decree of divorce from the *employee* or *retiree*, unless the covered divorced spouse elects to continue coverage at his or her own expense. It is the responsibility of the divorced spouse to notify the *program* within 60 days from the date of divorce and the *program* will notify the divorced spouse within 14 days of his or her right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of notification. Premium payment must be made within 45 days of the date continued coverage is elected, for coverage retroactive to the date coverage would have terminated.

2. Coverage for the divorced spouse under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 36 months beyond the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition.

### D. Dependent Children

1. Benefits under this *plan* for a covered *dependent* child of a covered *employee* or *retiree* will terminate on the last day of the month during which the *dependent* child no longer meets the definition of an eligible covered *dependent*, unless the *dependent* elects to continue coverage at his or her own expense. It is the responsibility of the *dependent* to notify the *program* within 60 days of the date coverage would have terminated and the *program* will notify the *dependent* within 14 days of his or her right to continue coverage.

2. Application for continued coverage must be made in writing to the *program* within 60 days of receipt of notification and premium payment must be made within 45

days of the date the continued coverage is elected, for coverage retroactive to the date coverage would have terminated.

3. Coverage for *children* under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 36 months beyond the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition.

E. *Dependents* of COBRA Participants

1. If a covered terminated *employee* has elected to continue coverage and if during the period of continued coverage the covered spouse or a covered *dependent* child becomes ineligible for coverage due to:

- a. death of the *employee*;
- b. divorce from the *employee*; or
- c. a *dependent* child no longer meets the definition of an eligible covered *dependent*;

2. Then, the spouse and/or *dependent* child may elect to continue coverage at their own expense. Coverage will not be continued beyond 36 months from the date coverage would have terminated.

F. *Dependents* of Non-Participating Terminated *Employee*

1. If an *employee* no longer meets the definition of an *employee*, or a leave of absence has expired and the *employee* has not elected to continue coverage, the covered spouse and/or covered *dependent children* may elect to continue coverage at their own expense. The elected coverage will be subject to the notification and termination provisions.

2. In the event a *dependent* child, covered under the provisions of the preceding paragraph no longer meets the definition of an eligible covered *dependent*, he or she may elect to continue coverage at his or her own expense. Coverage cannot be continued beyond 36 months from the date coverage would have terminated.

G. *Miscellaneous Provisions*. During the period of continuation, benefits will be identical to those provided to others enrolled in this *plan* under its standard eligibility provisions for *employee* and *retirees*.

H. *Disability* COBRA

1. If a covered *employee* or covered *dependent* is determined by social security or by the *program* staff (in the case of a person who is ineligible for social security *disability* due to insufficient "quarters" of employment), to have been totally disabled on the date the *covered person* became eligible for continued coverage or within the initial 18 months of coverage, coverage under this *plan* for the *covered person* who is totally disabled may be extended at his or her own expense up to a maximum of 29 months from the date coverage would have terminated. To qualify the *covered person* must:

- a. submit a copy of his or her social security *disability* determination to the *program* before the initial 18-month continued coverage period expires and within 60 days after the date of issuance of the social security determination; or

- b. submit proof of total *disability* to the *program* before the initial 18-month continued coverage period expires.

2. For purposes of eligibility for continued coverage under this Section, total *disability* means the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of 12 months. To meet this definition one must have a severe impairment which makes one unable to do his previous work or any other substantial gainful activity which exists in the national economy, based upon a person's residual functional capacity, age, education and work experience.

3. The staff and medical director of the *program* will make this determination of total *disability* based upon medical evidence, not conclusions, presented by the applicant's *physicians*, work history, and other relevant evidence presented by the applicant.

4. Coverage under this Section will continue until the earliest of the following:

- a. 30 days after the month in which social security determines that the *covered person* is no longer disabled. (The *covered person* must report the determination to the *program* within 30 days after the date of issuance by social security);

- b. 29 months from the date coverage would have terminated;

I. *Medicare* COBRA. If an *employee* becomes entitled to *Medicare* on or before the date the *employee's* eligibility for benefits under this *plan* terminates, the period of continued coverage available for the *employee's* covered *dependents* will be the earliest of the following:

1. failure to pay the applicable premium;
2. 36 months beyond the date coverage would have terminated;
3. entitlement to *Medicare*;
4. coverage under a *group health plan*, except when subject to a pre-existing condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:886 (June 2003).

**§107. Change of Classification**

A. *Adding or Deleting Dependents*. The *plan member* must notify the *program* whenever a *dependent* is added to, or deleted from, the *plan member's* coverage, regardless of whether the addition or deletion would result in a change in the class of coverage. Notice must be provided within 30 days of the addition or deletion.

B. *Change in Coverage*

1. When, by reason of a change in family status (e.g., marriage, birth of child), the class of coverage is subject to change, effective on the date of the event, if application for the change is made within 30 days of the date of the event.

2. When the addition of a *dependent* results in the class of coverage being changed, the additional premium will be charged for the entire month if the date of change occurs on or before the fourteenth day of the month. If the date of change occurs on or after the fifteenth day of the month, additional premium will not be charged until the first day of the following month.



C. Notification of Change. It is the responsibility of the *employee* to notify the *program* of any change in classification of coverage affecting the *employee's* contribution amount. Any such failure later determined will be corrected on the first day of the following month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:887 (June 2003).

### §109. Contributions

A. The state of Louisiana may make a contribution toward the cost of the *plan*, as determined on an annual basis by the legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003).

## Chapter 2. Termination of Coverage

### §201. Active Employee and Retired Employee Coverage

A. Subject to continuation of coverage and *COBRA* rules, all benefits of a *covered person* will terminate under this *plan* on the earliest of the following dates:

1. on the date the *program* terminates;
2. on the date the group or agency employing the covered *employee* terminates or withdraws from the *program*;
3. on the contribution due date if the group or agency fails to pay the required contribution for the covered *employee*;
4. on the contribution due date if the *covered person* fails to make any contribution which is required for the continuation of his coverage;
5. on the last day of the month of the covered *employee's* death;
6. on the last day of the month in which the covered *employee* ceases to be eligible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003).

### §203. Dependent Coverage Only

A. Subject to continuation of coverage and *COBRA* rules, *dependent coverage* will terminate under this *plan* on the earliest of the following dates:

1. on the last day of the month the *employee* ceases to be covered;
2. on the last day of the month in which the *dependent*, as defined in this *plan* ceases to be an eligible *dependent* of the covered *employee*;
3. for grandchildren for whom the *employee* does not have legal custody or has not adopted, on the date the child's parent ceases to be a covered *dependent* under this *plan* or the grandchild no longer meets the definition of *children*;
4. upon discontinuance of all *dependent coverage* under this *plan*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003).

## Chapter 3. Medical Benefits

### §301. Medical Benefits Apply when Eligible Expenses are Incurred by a Covered Person

A. Eligible Expenses. Eligible expenses are the charges incurred for the following items of service and supply when *medically necessary* for the *treatment* of disease, accident, illness, or injury. These charges are subject to the applicable limits of the *fee schedule*, schedule of benefits, exclusions and other provisions of the *plan*. A charge is incurred on the date that the service or supply is performed or furnished. Eligible expenses are:

1. *hospital* care. The medical services and supplies furnished by a *hospital* or ambulatory surgical center. covered charges for *room and board* will be payable as shown in the schedule of benefits;
2. services of a *physician*;
3. routine nursing services, i.e., "floor nursing" services provided by nurses employed by the *hospital* are considered as part of the *room and board*;
4. anesthesia and its administration;
5. laboratory examinations and diagnostic X-rays;
6. nuclear medicine and electroshock therapy;
7. blood and blood plasma, blood derivatives and blood processing, when not replaced;
8. surgical and medical supplies billed for *treatment* received in a *hospital* or ambulatory surgical center, and other covered provider's surgical and medical supplies as listed below:
  - a. catheters Cexternal and internal;
  - b. cervical collar;
  - c. leg bags for urinal drainage;
  - d. ostomy supplies;
  - e. prosthetic socks;
  - f. prosthetic sheath;
  - g. sling (arm or wrist);
  - h. suction catheter for oral evacuation;
  - i. surgical shoe (following foot surgery only);
  - j. plaster casts;
  - k. splints;
  - l. surgical trays (for certain procedures);
9. services of licensed physical, occupational or speech therapist when prescribed by a *physician* and pre-approved through outpatient procedure certification;
10. intravenous injections, solutions, and eligible related intravenous supplies;
11. services rendered by a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) for the *treatment* of accidental injuries to a *covered person's* sound natural teeth, if:
  - a. coverage was in effect with respect to the individual at the time of the accident;
  - b. *treatment* commences within 90 days from the date of the accident and is completed within two years from the date of the accident; and
  - c. coverage remains continuously in effect with respect to the *covered person* during the course of the *treatment*; eligible expenses will be limited to the original estimated total cost of *treatment* as estimated at the time of initial *treatment*;
12. *durable medical equipment*, subject to the lifetime maximum payment limitation as listed in the schedule of benefits. The *program* will require written certification by

the treating *physician* to substantiate the medical necessity for the equipment and the length of time it will be used;

13. initial prosthetic appliances. Subsequent prosthetic appliances are eligible only when acceptable certification is furnished to the *program* by the attending *physician*;

14. professional ambulance services, subject to the following provisions:

a. licensed professional ambulance service in a vehicle licensed for highway use to or from a *hospital* with facilities to treat an illness or injury. The *program* will consider a maximum up to \$350 less a \$50 copayment for transportation charges. Medical services and supplies will be considered separately;

b. licensed air ambulance service to a *hospital* with facilities to treat an illness or injury. The *program* will consider a maximum up to \$1,500 less a \$250 copayment. Medical services and supplies will be considered separately;

15. one pair of eyeglass lenses or contact lenses required as a result of bilateral cataract surgery performed while coverage was in force. Expenses incurred for the eyeglass frames will be limited to a maximum benefit of \$50;

16. the first two pairs of surgical pressure support hose. Additional surgical support hose may be considered an eligible expense at the rate of one pair per six-month period;

17. the first two ortho-mammary surgical brassieres. Additional ortho-mammary surgical brassieres may be considered an eligible expense at the rate of one per six-month period;

18. orthopedic shoes prescribed by a *physician* and completely custom built;

19. acupuncture when rendered by a medical doctor;

20. eligible expenses associated with an organ transplant procedure including expenses for patient screening, organ procurement, transportation of the organ, transportation of the patient and/or donor, surgery for the patient and donor and immunosuppressant drugs, if:

a. the transplantation must not be considered experimental or investigational by the American Medical Association;

b. the transplant surgery must be performed at a medical center, which has an approved transplant program as determined by *Medicare*;

c. the *plan* will not cover expenses for the transportation of surgeons or family members of either the patient or donor;

d. all benefits paid will be applied against the *lifetime maximum benefit* of the transplant recipient;

21. services of a physical therapist and occupational therapist licensed by the state in which the services are rendered when:

a. prescribed by a licensed medical doctor;

b. services require the skills of and performed by a licensed physical therapist or licensed occupational therapist;

c. restorative potential exists;

d. meets the standard for medical practice;

e. reasonable and necessary for the *treatment* of the disease, illness, accident, injury or postoperative condition;

f. approved through outpatient procedure certification;

22. cardiac *rehabilitation* when:

a. rendered at a medical facility under the supervision of a *physician*;

b. rendered in connection with a myocardial infarction, angioplasty with or without stenting, or cardiac bypass surgery;

c. completed within 6 months following the qualifying event;

NOTE: Charges incurred for dietary instruction, educational services, behavior modification literature, health club membership, exercise equipment, preventative programs and any other items excluded by the *plan* are not covered.

23. routine physical examinations and immunizations as follows:

a. *well-baby care* expenses subject to co-payments:

i. newborn facility and professional charges;

ii. birth to age 1 office visits for scheduled immunizations and screening;

b. *well-child care* expenses subject to co-payments:

i. age 1 to age 3 office visits per year for scheduled immunizations and screening;

ii. age 3 to age 16 office visit per year for scheduled immunizations and screening;

c. *well-adult care* expenses, subject to co-payment specified in the schedule of benefits, for routine physical examination by a *physician* and related laboratory and radiology charges:

i. age 16 until age 40 \$200 during a 3-year period;

ii. age 40 until age 50 \$200 during a 2-year period;

iii. age 50 and over \$200 during a 1-year period;

24. cancer screenings as follows:

a. one pap test for cervical cancer per *plan year*;

b. screening mammographic examinations performed according to the following schedule:

i. one baseline mammogram during the five-year period a person is 35-39 years of age;

ii. one mammogram every two *plan years* for any person who is 40-49 years of age or more frequently if recommended by a *physician*;

iii. one mammogram every 12 months for any person who is 50 years of age or older;

c. testing for detection of prostate cancer, including digital rectal examination and prostate-specific antigen testing, once every twelve months for men over the age of 50 years, and as *medically necessary* for men over the age of 40 years;

25. *outpatient surgical facility* fees as specified in the maximum payment schedule;

26. midwifery services performed by a certified midwife or a certified nurse midwife;

27. *physician's assistants*, perfusionists, and registered nurse assistants assisting in the operating room;

28. splint therapy for the *treatment* of temporomandibular joint dysfunction (TMJ), limited to a lifetime benefit of \$600 for a splint and initial panoramic x-ray only. Surgical *treatment* for TMJ will only be eligible following a demonstrated failure of splint therapy and upon approval by the *program*;

29. oxygen and oxygen equipment;

30. outpatient self-management training and education, including medical nutrition therapy, for the *treatment* of

diabetes, when these services are provided by a licensed health care professional with demonstrated expertise in diabetes care and *treatment* who has completed an educational program required by the appropriate licensing board in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, and only as follows:

a. a one-time evaluation and training program for diabetes self management, conducted by the health care professional in compliance with National Standards for Diabetes Self Management Education Program as developed by the American Diabetes Association, upon certification by the health care professional that the *covered person* has successfully completed the *program*, such benefits not to exceed \$500;

b. additional diabetes self-management training required because of a significant change in the patient's symptoms or conditions, limited to benefits of \$100 per year and \$2,000 per lifetime;

c. services must be rendered at a facility with a diabetes educational program recognized by the American Diabetes Association;

31.a. testing of sleep disorders only when the tests are performed at either:

i. a sleep study facility accredited by the American Sleep Disorders Association or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); or

ii. a sleep study facility located within a healthcare facility accredited by JCAHO;

b. no benefits are payable for surgical *treatment* of sleep disorders (including LAUP) except following demonstrated failure of non-surgical *treatment* and upon approval by the *program*;

32. mental health and/or substance abuse services only when obtained through the *program's* managed behavioral health care organization contractor as shown in the schedule of benefits. These services must be identified by a DSM IV diagnosis code.

B. Emergency Services - Subject to all applicable terms of the Plan, *emergency services* will be considered *eligible expenses* whether rendered by a *participating provider* or non-participating provider, as follows.

1. *Emergency services* provided to a *covered person* who is later determined not to have required *emergency services* will be considered *eligible expenses* except:

a. when the *covered person's* medical condition would not have led a prudent lay person, 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 serious jeopardy to health, serious impairment to bodily functions, or serious dysfunction of any bodily organ, unless the *covered person* was referred for *emergency services* by a *participating provider* or by an agent of OGB; or

b. when there was material misrepresentation, fraud, omission, or clerical error.

2. If a *covered person* requires hospitalization at a non-participating provider medically necessary inpatient services rendered by the non-participating provider will be considered *eligible expenses* until the *covered person* can be transferred to a participating provider.

3. OGB must be notified of the *emergency services* within 48 hours following commencement of treatment or admission, or as soon as medical circumstances permit. See also §307.C regarding the requirement for pre-admission certification (PAC) for emergency admissions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003).

### §303. Fee Schedule

A. The *fee schedule* sets the maximum fee that the *program* will allow for an eligible medical expense.

B. If the medical provider accepts an assignment of benefits, the *plan member* cannot be billed for amounts exceeding the *fee schedule*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:890 (June 2003).

### §305. Automated Claims Adjusting

A. Auto audit is a software program that applies all claims against its medical logic program to identify improperly billed charges, and charges for which this *plan* provides no benefits. Any claim with diagnosis or procedure codes deemed inadequate or inappropriate will be automatically reduced or denied. Providers accepting assignment of benefits cannot bill the *plan member* for the reduced amounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:890 (June 2003).

### §307. Utilization ReviewC Pre-Admission Certification, Continued Stay Review

A. Pre-admission certification (PAC) and continued stay review (CSR) establish the medical necessity and length of inpatient *hospital* confinement.

B. For a routine vaginal delivery, PAC is not required for a stay of 2 days or less. If the mother's stay exceeds or is expected to exceed 2 days, PAC is required within 24 hours after the delivery or the date on which any complications arose, whichever is applicable. If the baby's stay exceeds that of the mother, PAC is required within 72 hours of the mother's discharge and a separate pre-certification number must be obtained for the baby. In the case of a scheduled caesarean section, it is required that PAC be obtained prior to or the day of admission.

C. No benefits will be paid under the *plan*:

1. unless PAC is requested at least 72 hours prior to the planned date of admission;

2. unless PAC is requested within 48 hours of admission, or as soon as medical circumstances, permit in the case of *emergency services*;

3. for *hospital* charges incurred during any confinement for which PAC was requested, but which was not certified as *medically necessary* by the *program's* utilization review contractor;

4. for *hospital* charges incurred during any confinement for any days in excess of the number of days certified through PAC or CSR.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:890 (June 2003).

**§309. Outpatient Procedure Certification (OPC)**

A. OPC certifies that certain outpatient procedures and therapies are *medically necessary*.

B. OPC is required on the following procedures:

1. cataract;
2. laparoscopic cholecystectomy;
3. lithotripsy;
4. all PET scans and MRI's, as follows:
  - a. brain/head lower extremity;
  - b. upper extremity;
  - c. spine;
5. knee arthroscopy;
6. septoplasty;
7. therapies:
  - a. physical therapy;
  - b. speech therapy;
  - c. occupational therapy;
  - d. therapy with unlisted modality.

C. No benefits will be paid for the facility fee in connection with outpatient procedures, or the facility and professional fee in connection with outpatient therapies:

1. unless OPC is requested at least 72 hours prior to the planned date of procedure or therapy;
2. for charges incurred on any listed procedure for which OPC was requested but not certified as *medically necessary* by the *program's* utilization review contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003).

**§311. Case Management**

A. Case management (CM) is the care management program available in cases of illness or injury where critical care is required and/or *treatment* of extended duration is anticipated.

B. Case management may provide coverage for services that are not normally covered. To be eligible, the condition being treated must be a covered condition, and Case management must be approved prior to the service being rendered.

C. These charges are subject to the applicable co-payments, *fee schedule* and maximum benefit limitations.

D. The following criteria must be met:

1. the *program* must be the primary carrier at the time case management is requested. Any case management plan will be contingent upon the *program* remaining the primary carrier;
2. the patient must not be confined in any type of nursing home setting at the time case management is requested;
3. there must be a projected savings to the *program* through case management; or a projection that case management expenses will not exceed normal *plan* benefits; and
  - a. the proposed *treatment plan* will enhance the patient's quality of life;

b. benefits will be utilized at a slower rate through the alternative *treatment plan*.

E. If approved, case management may provide any of the following:

1. alternative care in special *rehabilitation* facilities;
2. alternative care in a skilled nursing facility/unit or swing bed (not nursing home), or the patient's home, subject to the applicable co-payments;
3. avoidance of complications by earlier *hospital* discharge, alternative care and training of the patient and/or family;
4. home health care services limited to 150 visits per *plan* year;
5. hospice care/benefits are always payable at 80 percent never at 100 percent;
6. private duty nursing care;
7. total parenteral nutrition, provided that home visits for TPN are not reimbursable separately;
8. enteral nutrition up to a single 90-day period for instances where through surgery or neuromuscular mechanisms the patient cannot maintain nutrition and the condition can reasonably be expected to improve during this one 90-day timespan.

F. Mental health and substance abuse *treatments* or conditions are not eligible for case management.

G. Benefits are considered payable only upon the recommendation of the *program's* contractor, with the approval of the attending *physician*, patient or his representative, and the *program* or its representative. Approval is contingent upon the professional opinion of the *program's* medical director, consultant, or his designee as to the appropriateness of the recommended alternative care.

H. If a condition is likely to be lengthy or if care could be provided in a less costly setting, the *program's* contractor may recommend an alternative plan of care to the *physician* and patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003).

**§313. Dental Surgical Benefits**

A. When excision of one or more impacted teeth is performed by a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) while coverage is in force, the *program* will pay the eligible expense actually incurred for the surgical procedure.

B. Expenses incurred in connection with the removal of impacted teeth, including pre-operative and post-operative care are subject to the applicable co-payments and the maximum benefit provisions of the *plan*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003).

**§315. Medicare Reduction**

A. If the patient has not chosen and paid a separate premium for the full coordination of benefits option, the charges will be reduced by whatever amounts are paid or payable by *Medicare*. The *program* requires written confirmation from the Social Security Administration or its

successor if a person is not eligible for *Medicare* coverage. All provisions of this *plan*, including all limitations and exceptions, will be applied.

B. *Retiree 100-Medicare COB*. Upon enrollment and payment of the additional monthly premium, a *plan member* and his *dependents* may choose to have full coordination of benefits with *Medicare*. Enrollment must be made within 30 days of eligibility for *Medicare* or within 30 days of retirement if already eligible for *Medicare* and at the annual open enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003).

### §317. Exceptions and Exclusions for All Medical Benefits

A. No benefits are provided under this *plan* for:

1. cases covered, in whole or in part, by any worker's compensation program, regardless of whether the patient has filed a claim for benefits. This applies to compensation provided on an expense-incurred basis or blanket settlements for past and future losses;

2. convalescent, skilled nursing, sanitarium, or *custodial care* or *rest cure*;

3. expenses for elective, non-therapeutic voluntary abortion, although expenses for complications as a result are covered;

4. injuries sustained while in an aggressor role;

5. expenses incurred as a result of the patient's attempt at a felony or misdemeanor;

6. expenses incurred by a *covered person* in connection with cosmetic surgery, unless necessary for the immediate repair of a deformity caused by a disease and/or injury which occurs while coverage is in force. No payment will be made for expenses incurred in connection with the *treatment* of any body part not affected by the disease and/or injury;

7. expenses incurred for shoes and related items similar to wedges, cookies and arch supports;

8. any expense, except for actual out-of-pocket expenses, incurred by a member of a Health Maintenance Organization (HMO), Health Maintenance *Plan* (HMP) or other prepaid medical plan or medical services plan if the *covered person* is enrolled on a group (employer-sponsored) basis;

9. dental braces and orthodontic appliances (for whatever reason prescribed or utilized) and *treatment* of periodontal disease;

10. dentures, dental implants and any surgery for their use, except if needed as the result of an accident that meets the *program's* requirements;

11. medical services, *treatment* or prescription drugs provided without charge to the *covered person* or for which the *covered person* is not legally obligated to pay;

12. maternity expenses incurred by any person other than the *employee* or the *employee's* legal spouse;

13. personal convenience items including, but not limited to, admit kits, bedside kits, telephone and television, guest meals, beds, and similar items;

14. charges for services and supplies which are in excess of the maximum allowable under the medical *fee*

*schedule*, *outpatient surgical facility fee schedule*, or any other limitations of the *plan*;

15. services and supplies which are not *medically necessary*;

16. services rendered for remedial reading and recreational, visual and behavioral modification therapy, *pain rehabilitation control and/or therapy*, and dietary or educational instruction for all illnesses, other than diabetes;

17. services and supplies in connection with or related to gender dysphoria or reverse sterilization;

18. artificial organ implants, penile implants, transplantation of other than homo sapiens (human) organs;

19. expenses subsequent to the initial diagnosis, for infertility and complications, including, but not limited to, services, drugs, and procedures or devices to achieve fertility; in-vitro fertilization, low tubal transfer, artificial insemination, intracytoplasmic sperm injection, embryo transfer, gamete transfer, zygote transfer, surrogate parenting, donor semen, donor eggs, and reversal of sterilization procedures;

20. air conditioners and/or filters, dehumidifiers, air purifiers, wigs or toupees, heating pads, cold devices, home enema equipment, rubber gloves, swimming pools, saunas, whirlpool baths, home pregnancy tests, lift chairs, devices or kits to stimulate the penis, exercise equipment, and any other items not normally considered medical supplies;

21. administrative fees, interest, penalties or sales tax;

22. marriage counseling and/or family relations counseling;

23. charges for services rendered over the telephone from a *physician* to a *covered person*;

24. radial keratotomy or any procedures for the correction of refractive errors;

25. speech therapy, except when ordered by a *physician* for the purpose of restoring partial or complete loss of speech resulting from stroke, surgery, cancer, radiation laryngitis, cerebral palsy, accidental injuries or other similar structural or neurological disease;

26. services and supplies related to obesity, surgery for excess fat in any area of the body, resection of excess skin or fat following weight loss or pregnancy;

27. hearing aids, or any examination to determine the fitting or necessity;

28. hair transplants;

29. routine physical examinations or immunizations not listed under eligible expenses;

30. diagnostic or *treatment* measures which are not recognized as generally accepted medical practice;

31. medical supplies not listed under eligible expenses;

32. *treatment* or services for mental health and substance abuse provided outside the *treatment* plan developed by the *program's* managed behavioral health care organization or by therapists with whom or at facilities with which the *program's* managed behavioral health care organization does not have a contract;

33. expenses for services rendered by a dentist or oral surgeon and any ancillary or related services, except for covered dental surgical procedures, dental procedures which fall under the guidelines of eligible dental accidents, procedures necessitated as a result of or secondary to cancer, or oral and maxillofacial surgeries which are shown to the

satisfaction of the *program* to be *medically necessary*, non-dental, non-cosmetic procedures;

34. genetic testing, except when determined to be *medically necessary* during a covered pregnancy;

35. *treatment* for temporomandibular joint dysfunction (TMJ), except as listed under eligible expenses;

36. services of a private-duty registered nurse (R.N.) or of a private-duty licensed practical nurse (L.P.N.);

37. breast thermograms;

38. services rendered by any provider related to the patient by blood, adoption or marriage;

39. facility fees for services rendered in a *physician's* office or in any facility not approved by the federal Health Care Financing Administration for payment of such fees under *Medicare*;

40. glucometers;

41. services rendered by a non-participating provider, except *emergency services* as provided herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:892 (June 2003).

**§319. Coordination of Benefits**

A. Coordination of benefits is the order of payment when two or more plans are involved. When a patient is also covered by another plan, the plans will coordinate benefits.

B. Benefit *plan* is this *plan* or any one of the following:

- 1. group or employer sponsored *plan*;
- 2. group practice and other group prepayment *plan*;
- 3. other plans required or provided by law. This does not include Medicaid or any benefit plan that does not allow coordination.

C. Primary Plan and Secondary Plan

1. All benefits provided are subject to coordination of benefits.

2. Benefit *Plan* Payment Order

a. If an individual is covered by more than one plan, the order of *benefit payment* will follow guidelines established by the National Association of Insurance Commissioners, except for *Health Maintenance Organizations* or other types of employer-sponsored prepaid medical plans.

b. The plan that pays first will pay as if there were no other plan involved. The secondary and subsequent plans may pay the balance due up to 100 percent of the total allowable expense. No plan will pay benefits greater than it would have paid in the absence of coordination of benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:893 (July 2003).

**§321. Managed Care Option**

A. The *program* may implement Managed Care Option (MCO) arrangements or other agreements to discount payable fees. The *program* reserves to itself the right to negotiate the amount of the discount, the incentives to be offered to *plan members* and all other provisions which are a part of any discount fee arrangement. To be eligible, the *program* must be the primary carrier at the time services are rendered. The only exception would be on a *covered person* with only *Medicare* Part A, who did not also have *Medicare*

Part B. The Part B charges would be eligible for *MCO* benefits.

1. If a *covered person* obtains medical services or *hospital* services from an eligible provider who has agreed to provide the services at a mutually agreed upon discount from the maximum medical *fee schedule* or at a per diem or discounted rate from a *hospital*, the *program* will pay after applicable co-pays, as specified in the schedule of benefits. There is a contractual assignment to all *MCO* participating providers.

2. Point of Service *MCO* Regions (Areas)

a. The following regions are used to determine whether there is an *MCO participating provider* in the same area as the point of service.

Region 1 - Zip Codes 70000 through 70199
Region 2 - Zip Codes 70300 through 70399
Region 3 - Zip Codes 70400 through 70499
Region 4 - Zip Codes 70500 through 70599
Region 5 - Zip Codes 70600 through 70699
Region 6 - Zip Codes 70700 through 70899
Region 7 - Zip Codes 71300 through 71499
Region 8 - Zip Codes 71000 through 71199
Region 9 - Zip Codes 71200 through 71299

b. If a *non-participating* provider is used, then no benefits are payable except for emergency services as provided herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:893 (June 2003).

**§323. Prescription Drug Benefits**

A. This *plan* allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor requiring a prescription and dispensed by a licensed pharmacist or pharmaceutical company, but which are not administered to a *covered person* as an inpatient *hospital* patient or an outpatient *hospital* patient, including insulin, Retin-A dispensed for *covered persons* under the age of 26, vitamin B12 injections, prescription potassium chloride, and over-the-counter diabetic supplies, including, but not limited to, strips, lancets, and swabs. In addition, this *plan* allows benefits, not to exceed \$200 per month, for expenses incurred for the purchase of low protein food products for the *treatment* of inherited metabolic diseases if the low protein food products are *medically necessary* and are obtained from a source approved by the OGB. Such expenses shall be subject to co-payments relating to prescription drug benefits. In connection with this benefit, the following words shall have the following meanings.

1. *Inherited Metabolic Disease*Ca disease caused by an inherited abnormality of body chemistry and shall be limited to:

- a. phenylketonuria (PKU);
- b. maple syrup urine disease (MSUD);
- c. methylmalonic acidemia (MMA);
- d. isovaleric acidemia (IVA);
- e. propionic acidemia;
- f. glutaric acidemia;
- g. urea cycle defects;
- h. tyrosinemia.

2. *Low Protein Food Products*Ca food product that is especially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary *treatment* of an inherited metabolic disease. Low protein food products shall not include a natural food that is naturally low in protein.

B. The following drugs, medicines, and related services are not covered:

1. appetite suppressant drugs;
2. dietary supplements;
3. topical forms of Minoxidil;
4. Retin-A dispensed for a *covered person* over age 26;
5. amphetamines dispensed for diagnoses other than Attention Deficit Disorder or Narcolepsy;
6. nicotine, gum, patches, or other products, services, or programs intended to assist an individual to reduce or cease smoking or other use of tobacco products;
7. nutritional or parenteral therapy;
8. vitamins and minerals;
9. drugs available over the counter; and
10. serostim dispensed for any diagnoses or therapeutic purposes other than AIDS wasting;
11. drugs for *treatment* of impotence, except following surgical removal of the prostate gland; and
12. glucometers.

C. Outpatient prescription drug benefits are adjudicated by a third-party pharmacy benefits manager with whom the *program* has contracted. In addition to all provisions, exclusions and limitations relative to prescription drugs set forth elsewhere in this *plan of benefits*, the following apply to expenses incurred for outpatient prescription drugs.

1. The *eligible expense* for a prescription drug is limited to the allowable cost of the generic drug, if a generic is available, and to the allowable cost for brand drugs identified on the pharmacy benefits manager's list of preferred drugs, if generic is not available.

2. Upon presentation of the *OGB* health benefits identification card at a *participating pharmacy*, the *plan member* is responsible for payment of 50 percent of eligible expense, up to \$50 per prescription dispensed, and 100 percent of excess cost (over and above the *eligible expense*) at the point of purchase. The *plan* will pay the balance of the *eligible expense* for prescription drugs dispensed at a *participating pharmacy*.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out of pocket threshold (below).

3. In the event the *plan member* does not present the *OGB* health benefits identification card to the *participating pharmacy* at the time of purchase, or prescription drugs are purchased from a non-participating pharmacy, the *plan member* will be responsible for full payment for the drug cost. No benefits are payable by the plan, and the *plan member's* payment will not be applied toward satisfaction of the annual out-of-pocket threshold in Paragraph 4.

4. There is a \$1200 per person per *plan year* out-of-pocket threshold for *eligible expenses* for prescription drugs. Once this threshold is reached, that is, the *plan member* has paid \$1,200 of *eligible expenses* for prescription drugs, the *plan member* will be responsible for a \$15 co-pay for brand drugs on the pharmacy benefits manager's list of preferred

drugs, with no co-pay for generic drugs. The *plan* will pay the balance of the eligible expense for prescription drugs dispensed at a *participating pharmacy*.

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations.

a. Up to a 34-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill.

b. For refills dispensed within 120 days of the most recent fill, up to a 102-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows.

i. For a supply of 1-34 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$50 per prescription dispensed, and 100 percent of excess cost.

ii. For a supply of 35-64 days the *plan member* will be responsible for payment of fifty percent of the *eligible expense* for the drug, up to a maximum of \$100 per prescription dispensed, and 100 percent of excess cost.

iii. For a supply of 69-102 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$150 per prescription dispensed, and 100 percent of excess cost.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out of pocket threshold (above).

iv. Once the out-of-pocket threshold for *eligible expenses* for prescription drug is reached, the *plan member's* co-payment responsibility for brand drugs on the Pharmacy Benefits Manager's list of preferred drugs will be \$15 for a 1-34 days supply, \$30 for a 35-64 days supply, and \$45 for a 69-102 days supply, with no co-pay for up to a 102-days supply of generic drugs.

6. *Brand Drug*Cthe trademark name of a drug approved by the U. S. Food and Drug Administration.

7. *Generic Drug*Ca chemically equivalent copy of a brand drug.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:893 (June 2003).

#### **Chapter 4. Uniform Provisions**

##### **§401. Statement of Contractual Agreement**

A. This written *plan of benefits* as amended and any documents executed by or on behalf of the covered *employee* constitute the entire agreement between the parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:894 (June 2003).

##### **§403. Properly Submitted Claim**

A. For *plan reimbursements*, all bills must show:

1. employee's name;
2. name of patient;
3. name, address, and telephone number of the provider of care;
4. diagnosis;

5. type of services rendered, with diagnosis and/or procedure codes;
6. date of service;
7. charges;
8. *employee's* member number;
9. provider tax identification number;
10. *Medicare* explanation of benefits, if applicable.

B. The *program* can require additional documentation in order to determine the extent of coverage or the appropriate *reimbursement*. Failure to furnish the requested information will constitute reason for the denial of benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:894 (June 2003).

**§405. When Claims must be Filed**

A. A claim for benefits must be received by the *program* within one year from the date on which the medical expenses were incurred.

B. The receipt date for electronically filed claims is the date on which the *program* receives the claim, not the date on which the claims is submitted to a clearinghouse or to the providers practice management system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

**§407. Right to Receive and Release Information**

A. The *program* may release to, or obtain from any company, organization, or person, without consent of or notice to any person, any information regarding any person which the *program* deems necessary to carry out the provisions of this *plan*, or like terms of any plan, or to determine how, or if, they apply. Any claimant under this *plan* must furnish to the *program* any information necessary to implement this provision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

**§409. Legal Limitations**

A. A *plan member* must exhaust the administrative claims review procedure before filing a suit for benefits. No action shall be brought to recover benefits under this *plan* more than one year after the time a claim is required to be filed or more than 30 days after mailing of the notice of decision of the administrative claims *committee*, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (July 2003).

**§411. Benefit Payment to other Group Health Plans**

A. When payments, which should have been made under this *plan*, have been made by another *group health plan*, the *program* may pay to the other plan the sum proper to satisfy the terms of this *plan of benefits*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

**§413. Recovery of Overpayments**

A. If an overpayment occurs, the *program* retains the right to recover the overpayment. The *covered person*, institution or provider receiving the overpayment must return the overpayment. At the *plan's* discretion, the overpayment may be deducted from future claims. Should legal action be required as a result of fraudulent statements or deliberate omissions on the application, the defendant will be responsible for attorney fees of 25 percent of the overpayment or \$1,000 whichever is greater. The defendant will also be responsible for court costs and legal interest from date of judicial demand until paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

**§415. Third Party Recovery Provision**

A. Right of *Subrogation* and *Reimbursement*. When this provision applies, the *covered person* may incur medical or dental charges due to injuries which may be caused by the act or omission of a third party or a third party may be responsible for payment. In such circumstances, the *covered person* may have a claim against the third party, or insurer, for payment of the medical or dental charges. Accepting benefits under this *plan* for those incurred medical or dental expenses automatically assigns to the *program* any rights the *covered person* may have to recover payments from any third party or insurer. This right allows the *program* to pursue any claim which the *covered person* has against any third party, or insurer, whether or not the *covered person* chooses to pursue that claim. The *program* may make a claim directly against the third party or insurer, but in any event, the *program* has a lien on any amount recovered by the *covered person* whether or not designated as payment for medical expenses. This lien will remain in effect until the *program* is repaid in full. The *program* reserves the right to recover either from the liable third party or the *covered person*. The *covered person*:

1. automatically assigns to the *program* his or her rights against any third party or insurer when this provision applies;
2. must notify the *program* of a pending third-party claim; and
3. must repay to the *program* the benefits paid on his or her behalf out of the *recovery* made from the third party or insurer.

B. Amount Subject to *Subrogation* or *Reimbursement*

1. The *covered person* agrees to recognize the *program's* right to *subrogation* and *reimbursement*. These rights provide the *program* with a priority over any funds paid by a third party to a *covered person* relative to the injury or sickness, including a priority over any claim for non-medical or dental charges, attorney fees, or other costs and expenses.

2. Notwithstanding its priority to funds, the *program's* *subrogation* and *reimbursement* rights, as well as the rights assigned to it, are limited to the extent to which the *program* has made, or will make, payments for medical or dental



charges as well as any costs and fees associated with the enforcement of its rights under the *program*.

3. When a right of *recovery* exists, the *covered person* will cooperate and provide requested information as well as doing whatever else is needed to secure the *program's* right of *subrogation* and *reimbursement* as a condition to having the *program* make payments. In addition, the *covered person* will do nothing to prejudice the right of the *program* to subrogate or seek *reimbursement*.

4. This right of refund also applies when a *covered person* recovers under an uninsured or underinsured motorist plan, homeowner's plan, renter's plan, medical malpractice plan, worker's compensation plan or any liability plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

#### **§417. Employer Responsibility**

A. It is the responsibility of the Participant Employer to submit enrollment and change forms and all other necessary documentation on behalf of its employees to OGB. Employees of a *participant employer* will not by virtue of furnishing any documentation to OGB on behalf of a *plan member*, be considered agents of OGB, and no representation made by any such person at any time will change the provisions of this Plan.

B. A *participant employer* shall immediately inform the OGB Program whenever a retiree with OGB coverage returns to full-time employment. The employee shall be placed in the Re-employed Retiree category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any participant employer that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a covered employee. If not timely forwarded to OGB, then OGB will assume responsibility only for Covered medical benefits due to Medicare, for a covered employee pursuant to this *plan of benefits*. The participant employer will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003).

#### **§419. Program Responsibility**

A. The *program* will administer the *plan* in accordance with the terms of the *plan of benefits*, state and federal law, and its established policies, interpretations, practices, and procedures. It is the express intent of this *program* that the *board of trustees* will have maximum legal discretionary authority to construe and interpret the terms and provisions of the *plan*, to make determinations regarding issues which relate to eligibility for benefits, to decide disputes which may arise relative to *covered person's* rights, and to decide

questions of *plan of benefits* interpretation and those of fact relating to the *plan of benefits*. The decisions of the *board of trustees* or its *committees* will be final and binding on all interested parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (July 2003).

#### **§421. Reinstatement to Position following Civil Service Appeal**

A. Indemnity Plan Participants. When coverage of a terminated *employee* who was a participant in the health indemnity plan is reinstated by reason of a civil service *appeal*, coverage will be reinstated to the same level in the health indemnity plan retroactive to the date coverage terminated. The *employee* and *participant employer* are responsible for the payment of all premiums for the period of time from the date of termination to the date of the final order reinstating the *employee* to his position. The *program* is responsible for the payment of all eligible benefits for charges incurred during this period. All claims for expenses incurred during this period must be filed with the *program* within 60 days following the date of the final order of reinstatement.

B. *Health Maintenance Organization (HMO)* Participants. When coverage of a terminated *employee* who was a participant in an HMO is reinstated by reason of Civil Service *appeal*, coverage will be reinstated in the HMO in which the *employee* was participating effective on the date of the final order of reinstatement. There will be no retroactive reinstatement of coverage and no premiums will be owed for the period during which coverage with the HMO was not effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003).

#### **§423. Plan of Benefits and/or Contract Amendments or Termination**

A. The *program* has the statutory responsibility of providing health and accident and death benefits for *covered persons* to the extent that funds are available. The *program* reserves to itself the right to terminate or amend the eligibility and benefit provisions of its *plan of benefits* from time to time as it may deem necessary to prudently discharge its duties. Termination or modifications will be promulgated subject to the applicable provisions of law, and nothing contained herein shall be construed to guarantee or vest benefits for any participant, whether active or retired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003).

### **Chapter 5. Claims Review and Appeal**

#### **§501. Administrative Review**

NOTE: This Section establishes and explains the procedures for review of benefit and eligibility decisions by the *program*.

##### **A. Administrative Claims Review**

1. The *covered person* may request a review of any claim for benefits or eligibility. The written request must

include the name of the *covered person*, member number, the name of the patient, the name of the provider, dates of service and should clearly state the reasons for the *appeal*.

2. The request for review must be submitted within 90 days after the date of the notification of denial of benefits, denial of eligibility, or denial after review by the utilization review organization or prescription benefits manager

**B. Review and *Appeal* Prerequisite to Legal Action**

1. The *covered person* must exhaust the administrative claims review procedure before filing a suit for benefits. Unless a request for review is made, the initial determination becomes final, and no legal action may be brought to attempt to establish eligibility or to recover benefits allegedly payable under the *program*.

**C. Administrative Claims *Committee***

1. An administrative claims *committee* (the *committee*) will consider all such requests for review and to ascertain whether the initial determination was made in accordance with the *plan of benefits*.

**D. Administrative Claims Review Procedure and Decisions**

1. Review by the *committee* shall be based upon a documentary record which includes:

- a. all information in the possession of the *program* relevant to the issue presented for review;
- b. all information submitted by the *covered person* in connection with the request for review; and
- c. any and all other information obtained by the *committee* in the course of its review.

2. Upon completion of the review the *committee* will render its decision which will be based on the *plan of benefits* and the information included in the record. The decision will contain a statement of reasons for the decision. A copy of the decision will be mailed to the *covered person* and any representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003).

**§503. Appeals from Medical Necessity Determinations**

NOTE: The following provisions will govern appeals from adverse determinations based upon medical necessity by OGB's Utilization Review Organization (URO) pursuant to Article 3, Section IV of this document.

**A. First Level Appeal.** Within 60 days following the date of an adverse initial determination based upon medical necessity, the *covered person*, or the provider acting on behalf of the *covered person*, may request a first level *appeal*.

1. Each such *appeal* will be reviewed within the URO by a health care professional who has appropriate expertise.

2. The URO will provide written notice of its decision.

**B. Second level review.** Within 30-days following the date of the notice of an adverse decision on a first level *appeal*, a *covered person* may request a second level review.

1. Each such second level review will be considered by a panel within the URO that includes health care professionals who have appropriate expertise and will be evaluated by a clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed.

a. The review panel will schedule and hold a review meeting, and written notice of the time and place of the review meeting will be given to the *covered person* at least fifteen working days in advance.

b. The *covered person* may:

i. present his/her case to the review panel;

ii. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting; and

iii. ask questions of any representative of the URO.

c. If face-to-face meeting is not practical the *covered person* and provider may communicate with the review panel by conference call or other appropriate technology.

2. The URO will provide written notice of its decision on the second level review.

**C. External Review.** Within 60 days after receipt of notice of a second level *appeal* adverse determination, the *covered person* whose medical care was the subject of such determination, with the concurrence of the treating health care provider, may submit request for an external review to the URO.

1. The URO will provide the documents and any information used in making the second level *appeal* adverse determination to its designated independent review organization.

2. The independent review organization will review all information and documents received and any other information submitted in writing by the *covered person* or the *covered person's* health care provider.

3. The independent review organization will provide notice of its recommendation to the URO, the *covered person*, and the *covered person's* health care provider.

4. An external review decision will be binding on the URO, on OGB and on the *covered person* regarding the medical necessity determination.

**D. Expedited Appeals**

1. An expedited *appeal* 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*, with regard to:

a. 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; or

b. 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.

2. In an expedited *appeal* the URO will 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.

3. The URO will provide written confirmation of its decision concerning an expedited *appeal* if the initial notification is not in writing.

4. In any case where the expedited *appeal* does not resolve a difference of opinion between the URO and the

covered person, or the provider acting on behalf of the covered person, such provider may request a second level review of the adverse determination.

E. Expedited External Review of Urgent Care Requests

1. When the 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.

2. The URO will transmit all documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or other available expeditious method.

3. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization will notify the covered person, the URO, and the covered person's health care provider of its decision to uphold or reverse the adverse determination.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:897 (June 2003).

## Chapter 6. Definitions

### §601. Definitions

*Appeal* Ca request for and a formal review by a plan member of a medical claim for benefits or an eligibility determination.

*Benefit Payment* Cpayment of eligible expenses incurred by a covered person during a plan year at the rate shown under percentage payable in the schedule of benefits.

*CEO* Cthe Chief Executive Officer of the program.

#### *Children* C

1. any natural or legally adopted children of the employee and/or the employee's legal spouse dependent upon the employee for support;

2. any children in the process of being adopted by the employee through an agency adoption who are living in the household of the employee and who are or will be included as a dependent of the employee's federal income tax return for the current or next tax year (if filing is required);

3. other children for whom the employee has legal custody, who live in the household of the employee, and who are or will be included as a dependent on the employee's federal income tax return for the current or next tax year (if filing is required);

4. grandchildren for whom the employee does not have legal custody, who are dependent upon the employee for support, and one of whose parents is a covered dependent. If the employee seeking to cover a grandchild is a paternal grandparent, the program will require that the biological father, i.e. the covered son of the plan member, execute an acknowledgement of paternity.

NOTE: If dependent parent becomes ineligible, the grandchild becomes ineligible for coverage, unless the employee has legal custody of the grandchild.

*COBRAC* federal continuation of coverage laws originally enacted in the Consolidated Omnibus Budget Reconciliation Act of 1985 with amendments.

*Committee* Cthe grievance committee of the board.

*Covered Person* Can active or retired employee, or his eligible dependent, or any other individual eligible for coverage for whom the necessary application forms have been completed and for whom the required contribution is being made.

*Custodial Care* Ccare designed essentially to assist an individual to meet his activities of daily living (i.e. services which constitute personal care such as help in walking, getting in and out of bed, assisting in bathing, dressing, feeding, using the toilet and care which does not require admission to the hospital or other institution for the treatment of a disease, illness, accident or injury, or for the performance of surgery; or, care primarily to provide room and board with or without routine nursing care, training in personal hygiene and other forms of self-care) and supervisory care by a doctor for a person who is mentally or physically incapacitated and who is not under specific medical, surgical or psychiatric treatment to reduce the incapacity to the extent necessary to enable the patient to live outside an institution providing medical care, or when, despite treatment, there is not reasonable likelihood that the incapacity will be so reduced.

*Date Acquired* Cthe date a dependent of a covered employee is acquired in the following instance and on the following dates only:

1. legal spouse-date of marriage;

2. children:

a. natural children-the date of birth;

b. children in the process of being adopted:

i. agency adoption-the date the adoption contract was executed by the employee and the adoption agency;

ii. private adoption-the date of the execution of the act of voluntary surrender in favor of the employee, if the program is furnished with certification by the appropriate clerk of court setting forth the date of execution of the act and the date that said act became irrevocable, or the date of the first court order granting legal custody, whichever occurs first;

c. other children living in the household of the covered employee who are or will be included as a dependent on the employee's federal income tax return-the date of the court order granting legal custody;

d. grandchildren for whom the employee does not have legal custody, who are dependent upon the employee for support, and one of whose parents is a covered dependent as defined:

i. the date of birth, if all the requirements are met at the time of birth; or

ii. the date on which the coverage becomes effective for the covered dependent, if all the requirements are not met at the time of birth.

*Dependent* Cany of the following persons who are enrolled for coverage as dependents, if they are not also covered as an employee:

1. the covered employee's legal spouse;

2. any (never married) children from date of birth (must be added to coverage within 30 days from date acquired by completing appropriate enrollment documents)

up to 21 years of age, dependent upon the *employee* for support;

3. any unmarried (never married) *children* 21 years of age, but under 24 years of age, who are enrolled and attending classes as full-time students and who depend upon the *employee* for support. The term full-time student means students who are enrolled at an accredited college or university, or at a vocational, technical, or vocational-technical or trade school or institute, or secondary school, for the number of hours or courses which is considered to be full-time attendance by the institution the student is attending;

NOTE: It is the responsibility of the *plan member* to furnish proof acceptable to the *program* documenting the full-time student status of a *dependent* child for each semester.

4. any *dependent* parent of an *employee* or of an *employee's* legal spouse, if living in the same household, was enrolled prior to July 1, 1984, and who is, or will be, claimed as a *dependent* on the *employee's* federal income tax return in the current tax year. The *program* will require an affidavit stating the covered *employee* intends to include the parent as a *dependent* on his federal income tax return for the current tax year. Continuation of coverage will be contingent upon the payment of a separate premium for this coverage.

*Dependent Coverage* benefits with respect to the *employee's dependents* only.

*Disability* that the *covered person*, if an *employee*, is prevented, solely because of a disease, illness, accident or injury from engaging in his regular or customary occupation and is performing no work of any kind for compensation or profit; or, if a *dependent*, is prevented solely because of a disease, illness, accident or injury, from engaging in substantially all the normal activities of a person of like age in good health.

*Durable Medical Equipment* equipment which:

1. can withstand repeated use;
2. is primarily and customarily used to serve a medical purpose;
3. generally is not useful to a person in the absence of a illness or injury; and
4. is appropriate for use in the home. *Durable medical equipment* includes, but is not limited to, such items as wheelchairs, *hospital* beds, respirators, braces (non-dental) and other items that the *program* may determine to be *durable medical equipment*.

*Emergency* a medical condition of recent onset and severity which would lead a prudent lay person, 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 serious jeopardy to the health of a *covered person* (or unborn child if the *covered person* is a pregnant woman), serious impairment to bodily functions, or serious dysfunction of any bodily organ.

*Emergency Services* those services medically necessary to screen, evaluate, and treat an *emergency*.

*Employee* a full-time *employee* as defined by a *participant employer* in accordance with state law. No person appointed on a *temporary appointment* will be considered an *employee*.

*Employee Coverage* benefits with respect to the *employee* only.

*Fee Schedule* COGB's schedule of maximum allowable charges for professional or *hospital* services.

*Future Medical Recovery* Recovery from another plan of expenses contemplated to be necessary to complete medical *treatment* of the *covered person*.

*Group Health Plan* a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or *employee* organization to provide health care (directly or otherwise) to the *employees*, former *employees*, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

*Health Insurance Coverage* benefits consisting of medical care (provided directly, through insurance or *reimbursement*, or otherwise) under any *hospital* or medical service policy or certificate, *hospital* or medical service plan contract, or HMO contract offered by a health insurance issuer. However, benefits described pursuant to the Health Insurance Portability and Accountability Act are not treated as benefits consisting of medical care.

*Health Maintenance Organization (HMO)* any legal entity, which has received a certificate of authority from the Louisiana Commissioner of Insurance to operate as a *health maintenance organization* in Louisiana.

*HIPAA* the Health Insurance Portability and Accountability Act of 1996 (USA Public Law 104-191) and regulations promulgated pursuant thereto.

*Hospital* an institution, which meets all the following requirements:

1. is currently a licensed as a *hospital* by the state in which services are rendered and is not primarily an institution for rest, the aged, the *treatment* of pulmonary tuberculosis, a nursing home, extended care facility or remedial training institution, or facilities primarily for the *treatment* of conduct and behavior disorders.

*Incurred Date* the date upon which a particular service or supply is rendered or obtained. When a single charge is made for a series of services, each service will bear a pro rated share of the charge.

*Inpatient Confinement* a *hospital* stay, which is equal to or exceeds 24 hours.

*Lifetime Maximum Benefit* the total amount of benefits that will be paid under the *plan* for all eligible expenses incurred by a *covered person*.

*Medically Necessary* a service or *treatment* which, in the judgement of the *program*:

1. is appropriate and consistent with the diagnosis and which, in accordance with accepted medical standards, could not have been omitted without adversely affecting the patient's condition or the quality of medical care rendered; and
2. is not primarily *custodial care*.

*Medicare* the health insurance available through *Medicare* laws enacted by the Congress of the United States.

*Occupational Therapy* the application of any activity in which one engages for the purposes of evaluation, interpretation, *treatment* planning, and *treatment* of problems interfering with functional performance in persons impaired by physical illness or injury in order to significantly improve functioning.

**Office of Group Benefits (OGB)** Cthe agency of the State of Louisiana, within the Office of the Governor, Division of Administration, established by R.S. 42:801 and vested with the general administration of all aspects of programs of benefits as authorized or provided for under the provisions of Chapter 12 of Title 42 of the Louisiana Revised Statutes.

**Outpatient Surgical Facility** Can ambulatory surgical facility licensed by the state in which the services are rendered.

**Pain Rehabilitation Control and/or Therapy** Cany program designed to develop the individual's ability to control or tolerate chronic pain.

**Participant Employer** Ca state entity, school board or a state political subdivision authorized by law to participate in the *program*.

**Participating Pharmacy** Ca pharmacy that participates in a network established and maintained by the Pharmacy Benefits Management firm with which the *program* has contracted to provide and administer outpatient prescription drug benefits.

**Participating Provider or MCO Participating Provider** Ca physician, hospital, or other health care provider that participates in the network established and maintained by *OGB* (or a firm with which *OGB* has contracted) to provide health care services to participant in this *plan*.

**Physical Therapy** Cthe evaluation of physical status as related to functional abilities and *treatment* procedures as indicated by that evaluation.

**Physician** C

1. *Physician* means the following persons, licensed to practice their respective professional skills by reason of statutory authority:

- a. doctor of medicine (M.D.);
- b. doctor of dental surgery (D.D.S.);
- c. doctor of dental medicine (D.M.D.);
- d. doctor of osteopathy (D.O.);
- e. doctor of podiatric medicine (D.P.M.);
- f. doctor of chiropractic (D.C.);
- g. doctor of optometry (O.D.);
- h. psychologist meeting the requirements of the National Register of Health Service Providers in Psychology;
- i. board certified social workers who are a members of an approved clinical social work registry or employed by the United States, the State of Louisiana, or a Louisiana parish or municipality, if performing professional services as a part of the duties for which he is employed;
- j. mental health counselors who are licensed by the state in which they practice;
- k. substance abuse counselors who are licensed by the state in which they practice.

2. The term *physician* does not include social workers, who are not board certified; interns; residents; or fellows enrolled in a residency training program regardless of any other title by which he is designated or his position on the medical staff of a *hospital*. A senior resident, for example, who is referred to as an assistant attending surgeon or an associate *physician*, is considered a resident since the senior year of the residency is essential to completion of the training program. Charges made by a *physician*, who is on the faculty of a state medical school, or on the staff of a state

*hospital*, will be considered a covered expense if the charges are made in connection with the *treatment* of a disease, illness, accident or injury covered under this *plan*, and if the *physician* would have charged a fee for the services in the absence of this provision.

3. It is the specific intent and purpose of the *program* to exclude *reimbursement* to the *covered person* for services rendered by social workers who are not board certified; and intern, resident, or fellow enrolled in a residency training program regardless of whether the intern, resident, or fellow was under supervision of a *physician* or regardless of the circumstances under which services were rendered.

4. The term *physician* does not include a practicing medical doctor in the capacity of supervising interns, residents, senior residents, or fellows enrolled in a training program, who does not personally perform a surgical procedure or provide medical *treatment* to the *covered person*.

**Plan** Ccoverage under this contract including and comprehensive medical benefits, prescription drug benefits, and mental health and substance abuse benefits.

**Plan Member** Ca covered person other than a dependent.

**Plan Year** Cthat period commencing at 12:01 a.m., July 1, standard time, at the address of the *employee*, or the date the *covered person* first becomes covered under the *plan* and continuing until 12:01 a.m., standard time, at the address of the *employee* on the next following July 1. Each successive *plan year* will be the period from 12:01 a.m., July 1, standard time, at the address of the *employee* to 12:01 a.m., the next following July 1.

**Program** Cthe *Program* of employee benefits authorized by Chapter 12 of Title 42 of the Louisiana Revised Statutes and administered by the *Office of Group Benefits (OGB)*.

**Recovery** Cmonies paid to the *covered person* by way of judgment, settlement, or otherwise to compensate for all losses caused by the injuries or sickness whether or not said losses reflect medical or dental charges covered by the *program*.

**Referee** Ca hearing officer, employed or contracted by *OGB*, to whom an *appeal* may be referred for hearing.

**Rehabilitation and Rehabilitation Therapy** Ccare concerned with the management of patients with impairments of function due to disease, illness, accident or injury.

**Reimbursement** Crepayment to the *program* for medical or dental benefits that it has paid toward care and *treatment* of the injury or sickness.

**Rest Cure** Ccare provided in a sanitarium, nursing home or other facility and designed to provide *custodial care* and provide for the mental and physical well being of an individual.

**Retiree** Can individual who was a covered *employee*, immediately prior to the date of retirement and who, upon retirement:

1. immediately received retirement benefits from an approved state or governmental agency defined benefit plan; or
2. was not eligible for participation in such a plan or had legally opted to not participate in such a plan; and
  - a. began employment prior to September 15, 1979, has 10 years of continuous state service and has reached the age of 65; or

b. began employment after September 16, 1979, has 10 years of continuous state service and has reached the age of 70; or

c. was employed after July 8, 1992, has 10 years of continuous state service, has a credit for a minimum of 40 quarters in the Social Security system at the time of employment and has reached the age of 65; or

d. maintained continuous coverage with the program as an eligible *dependent* until he/she became eligible as a former state *employee* to receive a retirement benefit from an approved state governmental agency defined benefit plan; or

3. immediately received retirement benefits from a state-approved or state governmental agency-approved defined contribution plan and has accumulated the total number of years of creditable service which would have entitled him to receive a retirement allowance from the defined benefit plan of the retirement system for which the *employee* would have otherwise been eligible. The appropriate state governmental agency or retirement system responsible for administration of the defined contribution plan is responsible for certification of eligibility to the State Employees Group Benefits Program;

4. *retiree* also means an individual who was a covered *employee* who continued the coverage through the provisions of *COBRA* immediately prior to the date of retirement and who, upon retirement, qualified for any of items 1, 2, or 3, above.

**Room and Board** *Call hospital* expenses necessary to maintain and sustain a *covered person* during a confinement, including but not limited to, facility charges for the maintenance of the *covered person's hospital* room, dietary and food services, nursing services performed by nurses employed by or under contract with the *hospital* and housekeeping services.

**Subrogation** *the program's* right to pursue the *covered person's* claims for medical or dental charges against a liability insurer, a responsible party or the *covered person*.

**Temporary Appointment** *Can* appointment to any position for a period of 120 consecutive calendar days or less.

**Treatment** *includes* consultations, examinations, diagnoses, and as well as medical services rendered in the care of a *covered person*.

**Well-Adult Care** *Ca* routine physical examination by a *physician* that may include an influenza vaccination, lab work and x-rays performed as part of the exam in that *physician's* office, and billed by that *physician* with wellness procedure and diagnosis codes. All other health services coded with wellness procedures and diagnosis codes are excluded.

**Well-Baby Care** *Croutine* care to a well newborn infant from the date of birth until age 1. This includes routine physical examinations, active immunizations, check-ups, and office visits to a *physician* and billed by that *physician*, except for the *treatment* and/or diagnosis of a specific illness.

**Well-Child Care** *Croutine* physical examinations, active immunizations, check-ups and office visits to a *physician*, and billed by that *physician*, except for the *treatment* and/or diagnosis of a specific illness, from age 1 to age 16.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:898 (June 2003).

## Chapter 7. Schedule of Benefits MCO

### §701. Comprehensive Medical Benefits

A. Eligible expenses for professional, technical, and facility services, prescription drugs, equipment, and supplies are reimbursed on the basis of a schedule of maximum allowable charges. In addition all eligible expenses are determined in accordance with plan limitations and exclusions.

1. No Lifetime Maximum Limitation on Benefits (except for Outpatient Prescription Drug Benefits and Durable Medical Equipment, below)

2. Member Co-payments

a. Inpatient Hospital Services	\$100 per day, maximum \$300 per admission
b. Outpatient Services (per visit/encounter)	
Physician services	\$15 Primary Care Physician \$25 Specialist <sup>1</sup>
Emergency Room Services	\$100 (waived if admitted)
Ambulatory Surgical Facility	\$100
Physical /OccupationalTherapy <sup>2</sup>	\$ 15
Speech Therapy <sup>2</sup>	\$ 15
MRI/CAT SCAN <sup>2</sup>	\$ 50
Sonograms	\$ 25
Cardiac Rehabilitation (6-month limit)	\$ 15
Pre-Natal and Postpartum Maternity (one-time co-payment to include Physician delivery charge, all pre-natal, one postpartum visit)	\$ 90
Well Care Services	\$15
Home Health <sup>2</sup> (Limit 150 visits per Plan year)	\$ 15 per visit

<sup>1</sup>Primary Care Physicians are limited to General Practice, Internal Medicine, Family Practice, Ob-Gyn, and Pediatrics.

<sup>2</sup>Prior authorization required.

3. Percentage Payable by the Plan after Co-Payments

a. Eligible expenses incurred for services of a participating MCO provider	100%
b. Eligible expenses incurred at a non-participating provider, except for emergencies as provided herein	0%
c. Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction	80%

### B. Pharmacy Benefits Prescription Drugs

1. lifetime maximum for all outpatient prescription drug benefits, per person \$250,000

2. Participating Pharmacy member pays 50 percent of eligible expense and 100 percent of excess cost at the point of purchase.

NOTE: Excess payments do not count toward the out of pocket threshold (below).

a. Eligible expense is limited generic drug cost, if generic is available, and to drugs identified on the pharmacy benefits manager's list of preferred drugs, if generic is not available.

b. Maximum co-payment for eligible expenses \$50 per prescription dispensed.

c. No maximum co-payment for excess costs.  
 d. Out-of-pocket threshold C\$1,200 per person, per plan year (for eligible expenses ONLY). Co-pay after threshold is reached:

- i. brand C\$15;
- ii. generic Cno co-pay.

e. Plan pays balance of eligible expense.

3. Non-participating pharmacy Cmember pays 100 percent, no credit toward out-of-pocket threshold.

**C. Durable Medical Equipment**

1. Lifetime maximum benefit for durable medical expenses, per person C\$50,000

2. Plan pays 80 percent of eligible expense.

**D. Well Care Services**

1. Well baby care (birth to age 1) Coffice visits for scheduled immunizations and screenings

2. Well child care C

a. age 1-2 Cthree office visits per year for scheduled immunizations and screenings;

b. age 3-15 Cone office visit per year for scheduled immunizations and screenings.

3. Well adult care Croutine physical examination and associated laboratory and radiology:

a. age 16-39 C\$200 during a 3-year period;

b. age 40-49 C\$200 during a 2-year period;

c. age 50 and \$200 Conce during a 1-year period.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:901 (June 2003).

**§703. Mental Health and Substance Abuse**

(Prior authorization required for all services.)

**A. Member Co-Payments**

1. Inpatient Hospital Services	\$100 per day, maximum \$300 per admission
2. Outpatient Services	\$25 per visit

**B. Benefits Limitations**

1. Inpatient Hospital Services	Maximum of 45 inpatient days per person, per plan year
2. Outpatient Services	Maximum of 52 outpatient visits per person, per plan year, inclusive of the intensive outpatient program

NOTE: Two days of partial hospitalization or two days of residential treatment center hospitalization may be traded for each inpatient day of treatment that is available under the 45-day plan year maximum for inpatient treatment. A residential treatment center is a 24-hour mental health or substance abuse, non-acute care treatment setting for active treatment interventions directed at the amelioration of the specific impairments that led to admission. Partial hospitalization is a level of care where the patient remains in the hospital less than 24 hours. Expenses incurred for emergency services will only be reimbursed if, after review, the services are determined to be a life-threatening psychiatric emergency resulting in an authorized mental health or substance abuse admission within 24 hours to an inpatient, partial, or intensive outpatient level care. Non-emergent psychiatric or substance abuse problems treated in the emergency room will not be eligible for reimbursement.

**C. Percentage Payable by the Plan after Co-payments**

1. Eligible expenses incurred for services of a participating MCO provider	100%
2. Eligible expenses incurred at a non-participating provider, except for emergencies as defined herein	0%
3. Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction	80%

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:902 (June 2003).

A. Kip Wall  
 Chief Executive Officer

0306#042

**RULE**

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

**Abortion Facility Licensure  
 (LAC 48:I.Chapter 44)**

Editor's Note: The following Rule is being repromulgated to correct submission errors. This Rule was promulgated in the May 20, 2003 edition of the *Louisiana Register* and may be viewed on pages 705-710.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule as authorized by R.S. 40:2175.1 et seq. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 48**

**PUBLIC HEALTHC GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 44. Abortion Facilities**

**§4401. Definitions**

*Abortion* Cany surgical procedure performed after pregnancy has been medically verified with the intent to cause the termination of the pregnancy other than for the purpose of:

- 1. producing a live birth;
- 2. removing an ectopic pregnancy; or
- 3. removing a dead fetus caused by a spontaneous abortion.

*Department* CDepartment of Health and Hospitals, (DHH).

*Existing Outpatient Abortion Facility* Cany outpatient abortion facility, as defined in this §4401, in operation at the time that the licensing standards governing outpatient abortion facilities are promulgated and published.

*First Trimester* Cthe time period from 6 to 14 weeks after the first day of the last menstrual period.

*General Anesthesia* Cany drug, element, or other material which, when administered, results in a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including a loss of ability to

independently maintain an airway and respond purposefully to physical stimuli or verbal command.

**Gestational Age**—the duration of a pregnancy as estimated from the first day of a woman's last menstrual period (LMP) or fertilization date plus two weeks.

**Licensed Physicians Assistant**—a person who:

1. is a graduate of a program accredited by the Committee on Allied Health Education and Accreditation or its successors; and

2. has successfully passed the national certificate examination administered by the National Commission on the Certification of Physician's Assistants or its predecessors; and

3. is approved and licensed by the Louisiana State Board of Medical Examiners to perform medical services under the supervision of a physician or group of physicians who are licensed by and registered with the board to supervise such assistant.

**Licensee**—the person, partnership, corporation, association, organization or professional entity on whom rests the ultimate responsibility and authority for the conduct of the outpatient abortion facility.

**Licensing Agency**—the Louisiana Department of Health and Hospitals.

**Local Anesthesia**—those anesthetizing agents administered to affect a very small localized area.

**Medical Director**—a physician licensed to practice medicine in Louisiana who is responsible for the direction of the medical services, nursing services, and health-related services provided to patients at an outpatient abortion facility.

**Outpatient Abortion Facility**—any outpatient facility, other than a hospital as defined in R.S. 40:2102 or an ambulatory surgical center as defined in R.S. 40:2133, in which any second trimester or five or more first trimester abortions per month are performed.

**Patient**—the woman receiving services from an outpatient abortion facility.

**Products of Conception**—placenta, amniotic sac or membrane, embryo, or fetal elements that result from a human pregnancy.

**Second Trimester**—the time period from 14 to 23 weeks after the first day of the last menstrual period.

**Secretary**—the secretary of the Louisiana Department of Health and Hospitals.

**Telecommunications**—any means of transmitting messages at a distance, including but not limited to telephones, cell phones, pagers, or other similar devices which foster communication.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2175.1 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:705 (May 2003), repromulgated LR 29:902 (June 2003).

**§4403. Licensing Requirements**

A. An outpatient abortion facility may not be established or operated in this state without an appropriate license issued by the licensing agency.

**B. Initial License Application**

1. Initial applicants and existing outpatient abortion facilities shall submit a set of architectural plans and specifications to the Office of State Fire Marshal and

Division of Engineering and Architectural Services of the department for review and approval.

2. When an architectural requirement on an existing outpatient abortion facility would impose a hardship, financial or otherwise, but would not adversely affect the health and safety of any patient, the existing outpatient abortion facility may submit a request for exception (waiver) to the department, with supporting documentation. The issuance of a waiver by the department does not apply to the Office of State Fire Marshal requirements for approval, which must be addressed exclusively with the Office of State Fire Marshal.

3. An application for license shall be completed and returned to the Health Standards Section by the applicant on forms supplied by the department.

a. Existing outpatient abortion facilities must secure and return a completed licensing application packet to the department within six months from promulgation and publication of the outpatient abortion facility licensing standards.

b. Existing outpatient abortion facilities shall be allowed to continue to operate without a license until such time as their initial application is acted upon by the department and until any and all appeals processes associated with that initial license have been completed, or the time within which any appeal process may be undertaken and completed has expired, whichever is later.

4. The application must be accompanied with a nonrefundable licensing fee set in accordance with R.S. 40:2006.

5. The department will respond to the applicant within 45 days of submitting the completed application.

6. Announced on-site inspections will be performed and the facility must be in substantial compliance with the requirements of the following offices prior to the issuance of an initial license:

- a. Office of State Fire Marshal
- b. Office of Public Health
- c. DHH Health Standards Section

**C. Renewal Application**

1. Application for license renewal shall be completed and returned to the Health Standards Section prior to the expiration date of the current license on forms supplied by the department. The application must be accompanied by the annual renewal fee set in accordance with R.S. 40:2006.

2. Inspection and approval by the State Fire Marshal and Office of Public Health are required annually.

3. The licensing agency may perform an unannounced on-site inspection upon annual renewal. If the outpatient abortion facility continues to meet the requirements established in R.S. 40:2175.1 et seq., and the licensing standards adopted in pursuance thereof, a license shall be issued which is valid for one year.

D. Other on-site inspections may be performed to investigate complaints in accordance with R.S. 40:2009.13-2009.20 and perform follow-up surveys as deemed necessary to ensure compliance with these licensing standards.

**E. Issuance of License**

1. Following receipt of the application and the licensing fee, the department shall issue a license if, after an on-site inspection, it finds that the outpatient abortion



facility is in full compliance with the requirements established in accordance with R.S. 40:2175.1 et seq., and the licensing standards adopted in pursuance thereof.

2. A provisional license may be issued in cases where additional time is needed for the outpatient abortion facility to comply fully with the requirements established in accordance with R.S. 40:2175.1 et seq., and the licensing standards adopted in pursuance thereof. The licensing agency may issue a provisional license to an outpatient abortion facility for a period not to exceed six months only if the failure to comply is not detrimental to the health or safety of the women seeking treatment in the outpatient abortion facility. The deficiencies that preclude the outpatient abortion facility from being in full compliance must be cited at the time the provisional license is issued.

3. A license issued to an outpatient abortion facility:

- a. is valid for only one location;
- b. shall be valid for one year from the date of issuance; unless revoked prior to that date;
- c. is not transferable or assignable;
- d. shall be posted in a conspicuous place on the licensed premises.

F. Denial, Suspension or Revocation of License. The procedure for denial, suspension and revocation of a license and appeals resulting from these actions will be the same as provided in the licensing regulations for hospitals, and as contained in R.S. 40:2110.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:705 (May 2003), repromulgated LR 29:903 (June 2003).

#### **§4405. Governing Body**

A. The abortion facility must have a governing body which meets at least annually. The governing body is the ultimate authority of the facility, and as such, it shall approve and adopt all bylaws, rules, policies, and procedures formulated in accordance with these licensing standards. All bylaws, rules, policies, and procedures formulated in accordance with these licensing standards shall be in writing, revised as necessary, and reviewed annually. If, due to type of ownership or other reasons, it is not possible or practical to establish a governing body, as such, then documents shall reveal the person(s) who are legally responsible for the conduct of the facility and are also responsible for carrying out the functions and obligations contained herein pertaining to the governing body.

B. The responsibilities of the governing body shall include, but not be limited to:

1. organization and administration of the facility;
2. acting upon recommendations from the medical staff relative to medical staff appointments;
3. designation of an administrator who has the responsibility to carry out the day-to-day operations of the facility;
4. designation of a medical director who has responsibility for the direction of medical services, nursing services, and health-related services provided to patients;
5. maintenance of the physical plant;
6. ensuring that the facility is equipped and staffed to meet the needs of the patients in the facility; and

7. establishing a system for periodic evaluation of its operation (quality assurance).

C. The governing body shall establish formal lines of communication with the medical staff through a liaison committee or other acceptable methods. This committee will address problems and programs of mutual concern regarding topics including, but not limited to, patient care, cost containment and improved practice.

D. Minutes of meetings of the governing body shall be maintained to adequately reflect the discharging of its duties and responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:706 (May 2003), repromulgated LR 29:904 (June 2003).

#### **§4407. Administration**

A. The administrator is the person who has been designated to carry out the day-to-day operations of the facility which include, but are not limited to the following functions:

1. employing qualified staff to provide the medical and clinical services to meet the needs of the patients being served;
2. assigning duties and functions to each employee commensurate with his/her licensure, certification, and experience and competence;
3. retaining a readily accessible written protocol for managing medical emergencies and the transfer of patients requiring further emergency care to a hospital. The written protocol shall identify which emergency equipment and medications the facility will use to provide for basic life support until emergency transportation can arrive and assume care of those in need of service. The facility shall ensure that when a patient is in the facility for an abortion, there is one physician present who has admitting privileges or has a written transfer agreement with a physician(s) who has admitting privileges at a local hospital to facilitate emergency care;
4. developing disaster plans for both internal and external occurrences. Annual drills shall be held in accordance with the plan. Documentation of these drills shall be recorded;
5. ensuring that a CPR-certified staff member who is currently trained in the use of emergency equipment is on the premises at all times when abortion services are being performed in the facility.

#### **B. Personnel Files**

1. Personnel folders shall be maintained on each employee. Contents shall include:
  - a. application;
  - b. current license (when required);
  - c. health screening reports;
  - d. documentation of areas covered in orientation;and
  - e. other pertinent information as deemed necessary by the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 29:706 (May 2003), repromulgated LR 29:904 (June 2003).

#### **§4409. Personnel**

##### **A. Medical Staff**

1. The medical staff of the facility shall consist of at least one physician who is licensed to practice medicine in Louisiana and is responsible to the governing body of the facility for the quality of all medical care provided to patients in the facility and for the ethical and professional practices of its members.

2. The medical staff shall formulate and adopt bylaws, rules, and policies for the proper conduct of its activities and recommend to the governing body physicians who are considered eligible for membership on the medical staff. Such bylaws, rules, and policies must be in writing and must be approved by the governing body.

3. All applications for membership to the medical staff shall be reviewed by the medical staff and recommendations for appropriate action shall be made to the governing body. The governing body's bylaws shall establish time frames for response to the recommendations of the medical staff.

4. An abortion shall be performed only by a physician who is licensed to practice in Louisiana.

5. A physician must be either present in the facility or immediately available by telecommunications to the staff when there is a patient in the facility.

6. A physician must remain in the facility until all patients are assessed to be stable.

##### **B. Nursing Personnel**

1. The nursing services shall be provided under the direction of a qualified registered nurse or medical director.

2. There shall be a plan of administrative authority with delineation of responsibilities and duties for each category of nursing personnel.

3. The number of nursing personnel on duty shall be sufficient to meet the needs of the patient(s) in the facility, as determined by the governing body, medical director, or registered nurse.

4. All nurses employed by the facility to practice professional nursing shall have a current and valid Louisiana nursing license as a registered nurse (RN) or licensed practical nurse (LPN), as appropriate.

5. Nursing care policies and procedures shall be in writing and be consistent with accepted nursing standards. Policies shall be developed for all nursing service procedures provided at the facility. The procedures shall be periodically reviewed and revised as necessary.

6. A formalized program of in-service training shall be developed for all categories of nursing personnel. Training related to required job skills shall be provided to nursing personnel.

##### **C. General Staffing**

1. When a patient is in the facility for an abortion, there shall be at least two staff members present, one of which must be either a licensed physician, RN, or LPN.

2. All employees shall be provided orientation and training related to the facility's policies, philosophy, job responsibilities of all staff, and emergency procedures.

D. Health Screening. The facility must have policies governing health screening on personnel in accordance with federal, state and local health laws.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2175.1 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:707 (May 2003), repromulgated LR 29:905 (June 2003).

#### **§4411. Pre-Operative Procedures**

A. Verification of Pregnancy. The presence of an intrauterine pregnancy shall be verified by one of the following:

1. urine or serum pregnancy test performed on-site;
2. detection of fetal heart tones; or
3. ultrasonography.

B. Duration of Pregnancy. Gestational age shall be estimated by the following methods pre-operatively:

1. date of last menstrual period, if known; and
2. pelvic examination; or
3. ultrasonography.

C. The following laboratory tests shall be performed and documented within 30 days prior to the performance of abortion:

1. hematocrit or hemoglobin determination; and
2. Rh Factor status.

D. Information and Informed Consent. Prior to an Abortion

1. A written informed consent shall be obtained in accordance with R.S. 40:1299.35.6(B).

2. The clinical record shall reflect informed consent for general anesthesia, if it is to be administered, as well as an indication of the patient's history of negative or positive response (for example, allergic reactions) to medications or any anesthesia to be given.

3. The patient shall be made aware of the importance of her post-operative care and follow-up to ensure that the procedure was properly completed and no long-term sequelae have ensued.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2175.1 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:707 (May 2003), repromulgated LR 29:905 (June 2003).

#### **§4413. Post-Operative Care and Procedures**

A. The patient's recovery shall be supervised by a licensed physician, a nurse trained in post-operative care, or a licensed physician's assistant. A patient in the post-operative or recovery room shall not be left unattended.

B. The patient shall be given written post-operative instructions for follow-up care. A contact for post-operative care from the facility shall be available to the patient on a 24-hour basis.

C. A licensed physician, nurse or licensed physician's assistant shall assess the patient to be awake, alert and medically stable before she is discharged in accordance with policies established by the medical director.

D. Upon completion of an abortion procedure, the physician shall immediately perform a gross examination of the uterine contents and shall document the findings in the patient's chart. If no products of conception are visible, a high-risk protocol for continuing pregnancy or ectopic pregnancy shall be followed.

E. Products of conception shall be disposed in compliance with Occupational Safety and Health

Administration (OSHA), Environmental Protection Agency (EPA) and other state and local standards covering the treatment of medical waste.

F. Rh immunoglobulin administration shall be offered to Rh-negative women and documented. If Rh immunoglobulin is not administered in the facility, one of the following is required:

1. informed waiver signed by a patient who refuses RH immunoglobulin; or
2. documentation of other arrangements for administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:708 (May 2003), repromulgated LR 29:905 (June 2003).

#### **§4415. Patient Records and Reports**

##### **A. Retention of Patient Records**

1. An abortion facility shall establish and maintain a medical record on each patient. The facility shall maintain the record to assure that the care and services provided to each patient is completely and accurately documented, and that records are readily available and systematically organized to facilitate the compilation and retrieval of information. Safeguards shall be established to maintain confidentiality and protection from fire, water, or other sources of damage.

2. The department is entitled to access all books, records, or other documents maintained by or on behalf of the facility to the extent necessary to ensure compliance with this Chapter 44. Ensuring compliance includes permitting photocopying by the department or providing photocopies to the department of any records or other information by or on behalf of the department as necessary to determine or verify compliance with this Chapter.

3. Patient records shall be under the custody of the facility for a period of seven years from the date of discharge. Patient records shall be maintained on the premises for at least one year and shall not be removed except under court orders or subpoenas. Any patient record maintained off-site after the first year shall be provided to the department for review no later than 24 hours from the time the department requests the medical record.

##### **B. Content of Medical Record**

1. The following minimum data shall be kept on all patients:

- a. identification data;
- b. date of procedure;
- c. medical and social history;
- d. physical examination;
- e. chief complaint or diagnosis;
- f. clinical laboratory reports (when appropriate);
- g. pathology report (when appropriate);
- h. physician's orders;
- i. radiological report (when appropriate);
- j. consultation reports (when appropriate);
- k. medical and surgical treatment;
- l. progress notes, discharge notes, and summary;
- m. nurses' records of care given, including medication administration records;
- n. authorizations, consents or releases;
- o. operative report;

p. anesthesia report, including post-anesthesia report; and

q. special procedures reports.

2. Signatures. Clinical entries shall be signed by the physician as appropriate, i.e., attending physician, consulting physician, anesthesiologist, pathologist, etc. Nursing notes and observations shall be signed by the nurse.

3. Nurses' Notes. All pertinent observations, treatments and medications given shall be entered in the nurses' notes. All other notes relative to specific instructions from the physician shall be recorded.

4. Completion of the medical record shall be the responsibility of the attending physician.

C. Nothing in this §4415 is intended to preclude the use of automated or centralized computer systems or any other techniques for the storing of medical records, provided the regulations stated herein are met.

D. Other Reports. An abortion facility shall maintain a daily patient roster of all patients receiving abortion services. This daily patient roster shall be retained for a period of three years.

##### **E. Confidentiality**

1. If the department, in the course of carrying out its licensing responsibilities under this Chapter 44, obtains any patient identifiable health information regarding a patient from an abortion facility, it shall keep such information strictly confidential and shall not disclose it to any outside person or agency, except as follows:

- a. to the patient who is the subject of the patient identifiable health information;
- b. pursuant to and in compliance with a valid written authorization executed by the patient who is the subject of the patient identifiable health information; or
- c. when required by the secretary of the U.S. Department of Health and Human Services to investigate or determine DHH's compliance with the requirements of the *Code of Federal Regulations*, Title 45, Part 164, Subpart E.

2. Any person who knowingly discloses such patient identifiable information in violation of Paragraph E.1 shall be subject to punishment pursuant to 42 U.S.C. §1320d-6 as follows:

- a. a fine of not more than \$50,000, or imprisonment for not more than one year, or both;
- b. if the violation is committed under false pretenses, a fine of not more than \$100,000, or imprisonment for not more than five years, or both; and
- c. if the violation is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine of not more than \$250,000, or imprisonment for not more than 10 years, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:708 (May 2003), repromulgated LR 29:906 (June 2003).

#### **§4417. Physical Environment**

A. The facility shall have a safe and sanitary environment that is properly constructed, equipped and maintained to protect the health and safety of patients and staff at all times.

1. Abortions shall be performed in a segregated procedure room, removed from general traffic lines with a minimum of 120 square feet, exclusive of vestibule, toilets or closets.

2. There shall be a hand washing fixture within each procedure room.

3. The facility shall have a separate recovery room or area with a minimum clear area of 2 feet, 6 inches around the three sides of each stretcher or lounge chair for work and circulation.

4. The following equipment and supplies shall be maintained to provide emergency medical care for problems that may arise and be immediately available to the procedure and recovery room(s):

- a. surgical or gynecologic table;
- b. surgical instruments for the performance of abortion;
- c. emergency drugs (designated as such by the medical director);
- d. oxygen;
- e. intravenous fluids; and
- f. sterile dressing supplies.

5. All openings to the outside shall be maintained to protect against the entrance of insects and animals.

6. A nurse's station with a countertop, space for supplies, provisions for charting and a communication system shall be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:709 (May 2003), repromulgated LR 29:906 (June 2003).

#### **§4419. Infection Control**

A. The facility shall have policies and procedures that address:

1. decontamination;
2. disinfection;
3. sterilization; and
4. storage of sterile supplies.

B. The facility shall make adequate provisions for furnishing properly sterilized supplies, equipment, utensils and solutions.

1. It is expected that some disposable goods shall be utilized; but when sterilizers and autoclaves are used, they shall be of the proper type and necessary capacity to adequately meet the needs of the facility.

2. Procedures for the proper use of equipment and standard procedures for the processing of various materials and supplies shall be in writing and readily available to personnel responsible for sterilizing procedures.

3. Acceptable techniques for handling sterilized and contaminated supplies and equipment shall be established to avoid contamination.

4. Medically necessary surgical instruments used to enter the uterine cavity shall be sterilized for each abortion procedure.

C. There shall be a separate sink for cleaning instruments and disposal of liquid waste.

D. Each facility shall develop, implement, and enforce written policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.

1. If the facility provides an in-house laundry, the areas shall be designed in accordance with acceptable hospital laundry design in that a soiled laundry area will be provided and separated from the clean laundry area. Dirty and/or contaminated laundry shall not be stored or transported through the clean laundry area.

2. For an in-house laundry, special cleaning and decontaminating processes shall be used for contaminated linens.

E. The facility shall provide housekeeping services that shall assure a safe and clean environment.

1. Housekeeping procedures shall be in writing and followed.

2. Housekeeping supplies shall be provided to adequately maintain the facility.

F. All garbage and waste materials shall be collected, stored and disposed of in a manner designed to prevent the transmission of contagious diseases, and to control flies, insects, and animals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:709 (May 2003), repromulgated LR 29:907 (June 2003).

#### **§4421. Pharmaceutical Services**

A. The facility shall provide pharmacy services and these services shall be commensurate with the needs of the patients and in conformity with state and federal laws.

B. There shall be policies and procedures for the storage, distribution, and handling and administration of drugs and biologicals in the facility.

C. The facility shall provide facilities for proper storage, safeguarding and distribution of drugs.

1. Drug cabinets must be constructed and organized to assure proper handling and safeguard against access by unauthorized personnel.

2. Storage areas shall have proper controls for ventilation, lighting and temperature.

3. Locked areas shall be designed to conform with state and federal laws.

D. In accordance with all applicable laws, records shall be kept on:

1. all ordering, purchasing, dispensing, and distribution of drugs; and

2. the disposal of unused drugs.

E. Records for prescription drugs dispensed to each patient shall contain the:

1. full name of the patient;

2. name of the prescribing physician;

3. name and strength of the drug;

4. quantity dispensed; and

5. date of issue.

F. Provision shall be made for emergency pharmaceutical service.

G. All outpatient abortion facilities shall have a site-specific Louisiana controlled dangerous substance license and United States Drug Enforcement Administration controlled substance registration for the facility in accordance with the Louisiana Uniform Controlled Dangerous Substance Act and Title 21 of the *United States Code*.

H. Drugs and biologicals shall be administered in compliance with an order from an individual who has prescriptive authority under the laws of Louisiana. Such orders shall be in writing and signed by the individual with prescriptive authority under the laws of Louisiana.

I. There shall be a supply of drugs for stabilizing and/or treating medical and surgical complications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:709 (May 2003), repromulgated LR 29:907 (June 2003).

**§4423. Anesthesia Services**

A. The facility shall have policies and procedures pertaining to the administration of general and local anesthesia that are approved by the medical director.

B. Local anesthesia, nitrous oxide, and intravenous sedation shall be administered by the treating physician or by qualified personnel under the orders and supervision of the treating physician, as allowed by law.

C. General anesthesia, if used, shall be given by an anesthesiologist, certified registered nurse-anesthetist (CRNA), or a physician trained in the administration of general anesthesia.

D. The physician who will perform the abortion shall be present in the facility before anesthesia is administered.

E. A physician shall be present in the facility during the post anesthesia recovery period until the patient is fully reacted and stable.

F. When there is a general anesthesia patient present in the facility, personnel trained in the use of all emergency equipment required shall be present on the premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:710 (May 2003), repromulgated LR 29:908 (June 2003).

David W. Hood  
Secretary

0306#020

**RULE**

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

**Freedom of Choice Waivers  
(LAC 50:I.Chapter 29)**

Editor's Note: This Subpart has recently been codified and is being promulgated for codification purposes.

The table below shows the compiled Rules used to create each Section in Subpart 3, Freedom of Choice Waivers.

Section	Rules
2901	LR 17:788 (August 1991), LR 19:645 (May 1993)
2903	LR 19:645 (May 1993)
2905	LR 17:788 (August 1991), LR 19:645 (May 1993), LR 27:547 (April 2001)
2907	LR 17:788 (August 1991), LR 19:645 (May 1993)
2909	LR 17:788 (August 1991), LR 19:645 (May 1993), LR 25:669 (April 1999)
2911	LR 19:645 (May 1993)
2913	LR 17:788 (August 1991), LR 19:645 (May 1993), LR 23:201. (February 1997)

**Title 50**

**PUBLIC HEALTHC MEDICAL ASSISTANCE**

**Part I. Administration**

**Subpart 3. Freedom of Choice Waivers**

**Chapter 29. CommunityCARE**

**§2901. Introduction**

A. A managed care program called CommunityCARE implemented in designated parishes of the state provide improved access to health care for eligible Medicaid beneficiaries, particularly those who reside in rural communities. The CommunityCARE program is administered in accordance with all regulations applicable to the program and the waiver request document approved by the U.S. Department of Health and Human Services. The goal of the CommunityCARE program is to improve the accessibility and the continuity and quality of care provided to Medicaid recipients in rural areas.

B. The CommunityCARE program provides Medicaid recipients in the designated parishes with a primary care physician (PCP), osteopath, or family doctor as the primary care provider for assigned beneficiaries.

C. Physician Case Management is defined as individualized planning and service coordination of medical services. Services shall be provided to Medicaid patients who are residents of designated geographic areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003).

**§2903. Recipient Qualifications**

A. All nonexcluded recipients are required to have a CommunityCARE provider. The following groups of Medicaid eligible recipients are required to enroll in the CommunityCARE program in the designated parishes:

1. AFDC-related recipients; and
2. SSI-related, nonMedicare recipients.

B. The following groups of eligibles are excluded from participation:

1. residents of skilled nursing facilities;
2. intermediate care facilities and mental hospitals;
3. Medicare (Part A or B) recipients;
4. medically needy;
5. foster children or adoptive children;
6. refugees;
7. lock-in recipients;

8. members of health management organizations (HMOs).

C. Newborns or newly certified or Medicaid eligible recipients may not be enrolled for up to 30 days from the date of certification and any prior month of retroactive coverage (up to three months).

D. Once enrolled in the CommunityCARE program, recipients are not re-enrolled at recertification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003).

#### **§2905. Provider Selection**

A. Beneficiaries have the opportunity to select a participating doctor, federally qualified health center (FQHC), or rural health clinic to be their primary care provider in their parish of residence or in a contiguous parish. Beneficiaries are assigned a participating provider if they do not select one. The individual or family physician will provide basic primary care, referral and after-hours coverage services for each beneficiary. The fact that each beneficiary has a PCP allows continuity of care centered around a single physician (or organized group) as a care manager.

B. CommunityCARE recipients may request to change primary care providers for cause at any time. They may change primary care providers without cause at any time during the first 90 days of enrollment with a primary care provider and at least every 12 months thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003).

#### **§2907. Provider Qualifications**

A. All doctors of medicine or general osteopathy who are currently enrolled Medicaid providers in good standing, practice primary care, and have offices in one of the designated or contiguous parishes, are eligible to participate in Community Care as primary care physicians (PCPs). However, they must meet all of the program requirements and agree to abide by the regulations. Primary care physicians enrolling in CommunityCARE must meet all of the general Medicaid enrollment conditions. The physicians who may participate as PCPs are:

1. general practitioner;
2. family practitioner;
3. pediatrician;
4. gynecologist;
5. internist;
6. obstetrician; or
7. other physician specialists who may be approved by the department under certain circumstances.

B. The PCP must be licensed to practice medicine in Louisiana and must hold admitting privileges at a Medicaid-enrolled hospital in the designated parish or contiguous parish.

C. Quality assurance/utilization review is an integral component of the care management concept. CommunityCARE physicians are monitored for over and under utilization and quality cost-effectiveness of the program. Providers who are out of compliance receive

provider education, but continued noncompliance may result in disenrollment from the program.

D. The PCP as the care manager bears responsibility for the beneficiary's total health care, which includes:

1. providing preventive, maintenance and acute care;
2. referring to specialists, when appropriate, for medically necessary diagnosis and treatment not provided in his/her practice;
3. exchanging medical information about the beneficiary with specialists;
4. admitting the beneficiary to the nearest appropriate hospital when necessary; and
5. coordinating inpatient care and maintaining an integrated medical record of the care the patient receives.

E. Only the PCP may authorize services for his/her assigned beneficiaries in appropriate settings according to medical necessity.

F. Twenty-four hour, seven day a week availability by telephone of primary care must be assured. The PCP may authorize coverage in his/her absence or in emergencies in accordance with CommunityCARE policy. The PCP must also enroll and participate as a KIDMED medical, vision, and hearing screening provider. Routine preventive health care and age-appropriate immunizations must be provided to or arranged for children by the PCP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003).

#### **§2909. Emergency Services**

A. The provisions of §4704 of the Balanced Budget Act of 1997 were adopted by the Department concerning provisions of emergency medical services to Medicaid recipients enrolled in the Medicaid program known as the CommunityCARE program.

B. Emergency services do not require authorization prior to the provision of the services, however, authorization must be obtained after the emergency services have been provided. Emergency medical services with respect to a CommunityCARE enrollee are defined as furnished by a provider that is qualified to provide such services under Medicaid and consist of covered inpatient and outpatient services that are needed to evaluate or stabilize an emergency medical condition. The CommunityCARE enrollees who present themselves for emergency medical services shall receive an appropriate medical screening to determine if an emergency medical condition exists. A triage protocol is not sufficient to be an appropriate medical screening. If the medical screening does not indicate an emergency medical condition exists, the treating hospital/physician shall refer the CommunityCARE enrollee back to his/her primary care physician for treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003).

#### **§2911. Prior Authorization**

A. The following Medicaid covered services do not require authorization and a written referral by the beneficiary's PCP:

1. dental;

2. pharmacy;
3. family planning;
4. skilled nursing facility care;
5. transportation;
6. ICF/MR services;
7. ophthalmology;
8. targeted case management services;
9. optometry and eyeglasses;
10. EPSDT health services for disabled children;
11. psychiatric hospital services;
12. home and community-based waiver services;
13. chiropractic services; and
14. mental health services.

B. All other Medicaid services, including obstetrical services, require prior authorization by the beneficiary's assigned PCP.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003).

**§2913. Physician Management**

A. The physician management fee in the CommunityCARE Waiver program is \$3 per enrolled recipient per month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:910 (June 2003).

David W. Hood  
Secretary

0306#008

**RULE**

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

**Medicaid EligibilityCExpansion of Coverage  
for Low Income Pregnant Women**

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

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the current provisions governing eligibility for low income pregnant women and expands coverage to include low income pregnant women with family income greater than 133 percent, but less than or equal to 185 percent of the federal poverty level (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act).

David W. Hood  
Secretary

0306#059

**RULE**

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

**Medicaid EligibilityCInclusion of the Unborn Child**

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

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of Section H of the May 20, 1996 Rule governing the determination of Medicaid eligibility. Utilizing provisions allowed under Section 1902(r)(2) of the Social Security Act, an unborn child shall be considered when establishing the household size for determination of Medicaid eligibility for other children in the household.

Implementation of this Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

David W. Hood  
Secretary

0306#061

**RULE**

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

**Medicaid EligibilityCIncome Disregards  
for Low Income Pregnant Women**

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

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the current policy governing countable income in the determination of Medicaid eligibility for low income pregnant women.

Utilizing provisions allowed under Section 1902(r)(2) of the Social Security Act, the department disregards the first 15 percent of monthly gross income under the federal poverty level standards when determining Medicaid eligibility for low income pregnant women (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act).

Implementation of this Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

David W. Hood  
Secretary

0306#060

**RULE**

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

Nursing Facility Services CStandards for Payment  
Ventilator Dependent Care CRequirements for Payments  
(LAC 50:II.10155)

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

**Title 50**

**PUBLIC HEALTHB MEDICAL ASSISTANCE**

**Part II. Medical Assistance Program**

**Subpart 3. Standards for Payments**

**Chapter 101. Nursing Facilities CStandards for Payment**

**Subchapter G. Levels of Care**

**§10155. Standards of Levels of Care**

A. - S.2.t ...

u. require staff to attend specialized training on ventilator assisted care if the facility provides SN-TDC services to Medicaid recipients from birth through age 25. The training will be conducted by a contractor designated by the department. The facility shall also cooperate with ongoing monitoring conducted by the contractor. Training content includes:

- i. the special health needs of, and risks to ventilator-dependent recipients;
- ii. the proper use and maintenance of equipment in use or new to the facility;
- iii. current, new, or unusual health procedures and medications;
- iv. diagnoses and treatments specific to pediatrics and in the development and nutritional needs of recipients;
- v. emergency intervention;
- vi. accessing school services for ventilator-assisted recipients; and
- vii. discharge planning where families express interest in a recipient returning home.

S.2.v - T. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended LR 23:970 (August 1997), LR 29:911 (June 2003).

David W. Hood  
Secretary

0306#062

**RULE**

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

Personal Care Services CLong Term Care  
(LAC 50:XV.Chapter 129)

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

**Title 50**

**PUBLIC HEALTHB MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 9. Personal Care Services**

**Chapter 129. Long Term Care**

**§12901. General Provisions**

A. The purpose of personal care services is to enable an individual whose needs would otherwise require placement in an acute or long term care facility to remain safely in that individual's own home. The mission of Medicaid funded personal care services is to supplement the family and/or community supports that are available to maintain the recipient in the community. This service program is not intended to be a substitute for available family and/or community supports. Personal care services must be prescribed by a physician and provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid services being provided to the recipient and will be considered in conjunction with those other services. Personal care services will be provided in a manner consistent with the basic principles of consumer direction as set forth in § 12907.

B. An assessment shall be performed for every recipient who requests personal care services. This assessment shall be utilized to identify the recipient's long term care needs, preferences, the availability of family and community supports and to develop the service plan. The Minimum Data Set-Home Care (MDS-HC) System will be used as the basic assessment tool. However, other assessment tools may be utilized as a supplement to the MDS-HC to address the needs of special groups within the target population.

C. Prior Authorization. Personal care services must be prior authorized. Requests for prior authorization must be submitted to the Bureau of Health Services Financing or its designee and include a copy of the assessment form and the service plan. Any other pertinent documents that substantiates the recipient's request for services may also be submitted. These documents will be reviewed to determine whether the recipient meets the criteria for personal care services and the necessity for the number of services hours requested.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003).



### §12903. Covered Services

A. Personal care services are defined as those services that provide assistance with the activities of daily living (ADL) and the instrumental activities of daily living (IADL). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by an individual for continued well-being, health and safety. ADLs include tasks such as:

1. eating;
2. bathing;
3. dressing;
4. grooming;
5. transferring (getting in/out of the tub, from a bed to a chair);
6. reminding the recipient to take medication;
7. ambulation; and
8. toileting.

B. IADLs are those activities that are considered essential for sustaining the individual's health and safety, but may not require performance on a daily basis. IADLs include tasks such as:

1. light housekeeping;
2. food preparation and storage;
3. grocery shopping;
4. laundry;
5. assisting with scheduling medical appointments when necessary;
6. accompanying the recipient to medical appointments when necessary due to the recipient's frail condition; and
7. assisting the recipient to access transportation.

C. Emergency and non-emergency medical transportation is a covered Medicaid service and is available to all recipients. Non-medical transportation is not a required component of personal care services. However, providers may choose to furnish transportation for recipients during the course of providing personal care services. If transportation is furnished, the provider agency must accept any liability for their employee transporting a recipient. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance. See §12917 regarding reimbursement.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003).

### §12905. Recipient Qualifications

A. Personal care services shall be available to recipients who are 65 years of age or older, or 21 years of age or older and disabled. Disabled is defined as meeting the eligibility criteria established by the Social Security Administration for disability benefits. The recipient must meet the requirements for a nursing facility level of care as defined in the Standards for Payment for Nursing Facility Services and be able to participate in his/her care and self direct the services provided by the personal care worker independently or through a responsible representative. Responsible representative is defined as the person designated by the recipient to act on his/her behalf in the process of accessing

personal care services. In addition, the recipient must meet one of the following criteria:

1. is in a nursing facility and could be discharged if community-based services were available;
2. is likely to require nursing facility admission within the next 120 days;
3. has a primary care-giver who has a disability or is over the age of 70; or
4. faces a substantial possibility of deterioration in mental or physical condition or functioning if either home and community-based services or nursing facility services are not provided in less than 120 days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003).

### §12907. Recipient Rights

A. Recipients who receive services under Personal Care Services-Long Term Care Program have the right to actively participate in the development of their service plan and the decision-making process regarding service delivery. Recipients also have the right to freedom of choice in the selection of a provider of personal care services and to participate in the following activities:

1. interviewing and selecting the personal care worker who will be providing services in their home;
2. developing the work schedule for their personal care worker;
3. training the individual personal care worker in the specific skills necessary to maintain the recipient's independent functioning while safely maintaining him/her in the home;
4. developing an emergency component in the service plan that includes a list of personal care staff who can serve as back-up when unforeseen circumstances prevent the regularly scheduled work from providing services;
5. signing off on payroll logs and other documentation to verify staff work hours and to authorize payment;
6. evaluating the personal care worker's job performance; and
7. transferring or discharging the personal care worker assigned to provide their services;
8. an informal resolution process to address their complaints and/or concerns regarding personal care services; and
9. a formal resolution process to address those situations where the informal resolution process fails to resolve their complaint.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003).

### §12909. Standards for Participation

A. In order to participate as a personal care services provider in the Medicaid Program, an agency:

1. must comply with:
  - a. state licensing regulations;
  - b. Medicaid provider enrollment requirements;
  - c. the standards of care set forth by the Louisiana Board of Nursing; and

d. the policy and procedures contained in the Personal Care Services provider manual;

2. must possess a current, valid license for the Client Services Providers, Personal Care Attendant Services Module issued by the Department of Social Services, Bureau of Licensing.

B. In addition, a Medicaid enrolled agency must:

1. either demonstrate experience in successfully providing direct care services to the target population or demonstrate the ability to successfully provide direct care services to the target population;

2. employ a sufficient number of personal care and supervisory staff to ensure adequate coverage in the event that a worker's illness or an emergency prevents him/her from reporting for work;

3. ensure that a criminal background check and drug testing is conducted for all direct care staff prior to an offer of employment being made;

4. ensure that the direct care staff is qualified to provide personal care services. Assure that all new staff satisfactorily completes an orientation and training program in the first 30 days of employment. A legally responsible relative is prohibited from being the paid personal care worker for a family member;

5. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations. The subcontracting of individual personal care staff and/or supervisors is prohibited;

6. implement and maintain an internal quality assurance plan to monitor recipient satisfaction with services on an ongoing basis; and

7. document and maintain recipient records in accordance with federal and state regulations governing confidentiality and licensing requirements;

8. have written policies and procedures that recognize and reflect the recipient's right to participate in the activities set forth in § 12907;

9. have a written policy for an informal resolution process to address recipient complaints and/or concerns regarding personal care services; and

10. have a written policy for a formal resolution process to address those situations where the informal resolution process fails to resolve the recipient's complaint.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003).

#### **§12911. Reserved.**

#### **§12913. Place of Service**

A. Personal care services may be provided in the recipient's home or in another location outside of the recipient's home if the provision of these services allows the recipient to participate in normal life activities. The recipient's home is defined as the recipient's place of residence including his/her own house or apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. A hospital, an

institution for mental disease, a nursing facility, or an intermediate care facility for the mentally retarded, are not considered to be the recipient's home.

B. The provision of services outside of the recipient's home does not include trips outside of the borders of the state. However, consideration will be given when the recipient lives in an area adjacent to the state's border and it is customary for residents of that area to seek medical and other services in the neighboring state.

C. Personal care services shall not be provided in the personal care worker's home. However, consideration will be given if it can be satisfactorily assured that:

1. the selection of the place of service is consistent with the recipient's choice;

2. the recipient's health and safety can be maintained when services are provided in the personal care worker's home; and

3. the services do not substitute for otherwise available family and/or community supports.

D. Place(s) of service must be documented in the service plan and progress notes.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003).

#### **§12915. Service Limitations**

A. Personal care services shall be limited to up to 56 hours per week. Authorization of service hours shall be considered on a case-by-case basis as substantiated by the recipient's service plan and supporting documentation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003).

#### **§12917. Reimbursement Methodology**

A. Reimbursement for personal care services shall be a prospective flat rate for each approved unit of service that is provided to the recipient. One quarter hour is the standard unit of service for personal care services. Reimbursement shall not be paid for the provision of less than one quarter hour of service. Additional reimbursement shall not be available for transportation furnished during the course of providing personal care services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003).

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

David W. Hood  
Secretary

0306#063

**RULE**

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

**Private Hospitals COutlier Payments**

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

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the February 20, 1996 Rule by changing the definition of marginal cost. The marginal cost factor for outliers shall be considered to be 100 percent of costs after the costs for the case exceed the hospital's prospective payment. In addition, the Bureau amends the reimbursement methodology for calculating outlier payments for private hospitals by changing the hospital specific cost-to-charge ratio from the base period currently being utilized to a hospital specific cost-to-charge ratio based on the hospital's cost report period ending in state fiscal year (SFY) 2000 (July 1, 1999 through June 30, 2000). The cost-to-charge ratio for new hospitals and hospitals that did not provide Medicaid Neonatal Intensive Care Unit (NICU) services in SFY 2000 will be calculated based on the first full year cost reporting period that the hospital was open or that Medicaid NICU services were provided. Outlier payments are not payable for transplant procedures as transplants are not reimbursed on a prospective basis.

A deadline of six months subsequent to the date that the final claim is paid is established for receipt of the written request filing for outlier payments.

The hospital specific cost-to-charge ratio will be reviewed bi-annually and the outlier payment may be adjusted as a result of this review at the discretion of the Secretary. Upon adoption of the Rule, hospitals shall receive notification of an impending change to the hospital specific outlier payment by means of a letter sent directly to the hospital.

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

David W. Hood  
Secretary

0306#064

**RULE**

**Department of Natural Resources  
Office of Conservation**

**Disposal of Exploration and Production Waste  
(LAC 43:XVII.Chapter 31 and XIX.Chapter 5)**

The Louisiana Office of Conservation has promulgated the following new salt cavern exploration and production (E&P) waste disposal regulations at LAC 43:XVII.3101 et

seq. and has amended the existing commercial facility regulations in LAC 43:XIX.501, 503.F.3, 505.B, 507.A.1 and 6, 511.E.2, 519.C.4.d and C.7, 523.D, 525.D, 535.G, 547.A.6, 555 and 565.F in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq., and pursuant to the power delegated under the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, R.S. 4.C(1), (2), (3), (6), (8), (9), (10), (14), (16) and I. The new and amended regulations included herewith will provide for the disposal of E&P waste into salt caverns and clarify certain areas of existing commercial facility regulations in LAC 43:XIX.501 et seq.

**Title 43**

**NATURAL RESOURCES**

**PART XVII. Office of ConservationCInjection and Mining**

**Subpart 4. Statewide Order No. 29-M-2**

**Chapter 31. Disposal of Exploration and Production Waste in Solution-Mined Salt Caverns**

**§3101. Definitions**

*Application*Cthe filing on the appropriate Office of Conservation form(s), including any additions, revisions, modifications, or required attachments to the form(s), for a permit to operate a salt cavern waste disposal facility or parts thereof.

*Aquifer*Ca geologic formation, groups of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

*Blanket Material*Csometimes referred to as a "pad." The blanket material is a fluid placed within a salt cavern that is lighter than the water in the cavern and will not dissolve the salt or any mineral impurities that may be contained within the salt. The function of the blanket is to prevent unwanted leaching of the salt cavern roof, prevent leaching of salt from around the cemented casing, and to protect the cemented casing from internal corrosion. Blanket material typically consists of crude oil, diesel, mineral oil, or some fluid possessing similar noncorrosive, nonsoluble, low density properties. The blanket material is placed between the salt cavern's outermost hanging string and innermost cemented casing.

*Brine*Cwater within a salt cavern that is completely or partially saturated with salt.

*Cap Rock*Cthe porous and permeable strata immediately overlying all or part of the salt stock of some salt structures typically composed of anhydrite, gypsum, limestone, and occasionally sulfur.

*Casing*Cmetallic pipe placed and cemented in the wellbore for the purpose of supporting the sides of the wellbore and to act as a barrier preventing subsurface migration of fluids out of or into the wellbore.

*Catastrophic Collapse*Cthe sudden or utter failure of the overlying strata caused by the removal or otherwise weakening of underlying sediments.

*Cementing*Cthe operation (either primary, secondary, or squeeze) whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

*Circulate to the Surface*Cthe observing of actual cement returns to the surface during the primary cementing operation.

*Commercial Salt Cavern Facility*Ca legally permitted salt cavern waste disposal facility that disposes of exploration

and production waste off the site where produced by others for a fee or other consideration.

**Commissioner** the Commissioner of Conservation for the State of Louisiana.

**Contamination** the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable of their intended purposes.

**Discharge** the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, ground, or waters of the state. A discharge shall not include that which is allowed through a federal or state permit.

**E&P Waste** exploration and production waste.

**Effective Date** the date of final promulgation of these rules and regulations.

**Emergency Shutdown Valve** a valve that automatically closes to isolate a salt cavern well from surface piping in the event of a specified condition that, if uncontrolled, may cause an emergency.

**Exempted Aquifer** an aquifer or its portion that meets the criteria of the definition of underground source of drinking water but which has been exempted according to the procedures set forth in §3103.E.2.

**Existing Salt Cavern** a salt cavern originally permitted by the Office of Conservation for use other than E&P waste disposal.

**Existing Well** a wellbore originally permitted by the Office of Conservation for use other than to facilitate E&P waste disposal into a salt cavern.

**Exploration and Production Waste (E&P Waste)** drilling wastes, salt water, and other wastes associated with the exploration, development, or production of crude oil or natural gas wells and which is not regulated by the provisions of, and, therefore, exempt from the Louisiana Hazardous Waste Regulations and the Federal Resource Conservation and Recovery Act, as amended. E&P Wastes include, but are not limited to, those wastes listed in the definition for E&P Waste located in LAC 43:XIX.501 (Definitions).

**Fluid** any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.

**Generator** a person or corporate entity who creates or causes to be created any E&P waste.

**Ground Subsidence** the downward settling of the Earth's surface with little or no horizontal motion in response to natural or manmade subsurface actions.

**Groundwater Aquifer** water in the saturated zone beneath the land surface that contains less than 10,000 mg/l total dissolved solids.

**Groundwater Contamination** the degradation of naturally occurring groundwater quality either directly or indirectly as a result of human activities.

**Hanging String** casing whose weight is supported at the wellhead and hangs vertically in a larger cemented casing or another larger hanging string.

**Injection and Mining Division** the Injection and Mining Division of the Louisiana Office of Conservation within the Department of Natural Resources.

**Leaching** the process whereby an undersaturated fluid is introduced into a salt cavern thereby dissolving additional salt and increasing the volume of the salt cavern.

**Migrating** any movement of fluids by leaching, spilling, discharging, or any other uncontained or uncontrolled manner, except as allowed by law, regulation, or permit.

**New Well** a wellbore permitted by the Office of Conservation after the effective date of these rules and regulations to be completed into an existing salt cavern to facilitate E&P waste disposal.

**Non-Commercial Salt Cavern Facility** a legally permitted salt cavern waste disposal facility that disposes of only E&P waste generated by the owner of the facility during oil and gas exploration and production activities.

**Office of Conservation** the Louisiana Office of Conservation within the Department of Natural Resources.

**Oil-Based Drilling Muds** any oil-based drilling fluid composed of a water in oil emulsion, organophillic clays, drilled solids and additives for down-hole rheology and stability such as fluid loss control materials, thinners, weighting agents, etc.

**Operator** the person recognized by the Office of Conservation as being responsible for the physical operation of the facility or activity subject to regulatory authority under these rules and regulations.

**Owner** the person recognized by the Office of Conservation as owning the facility or activity subject to regulatory authority under these rules and regulations.

**Person** an individual, association, partnership, public or private corporation, firm, municipality, state or federal agency and any agent or employee thereof, or any other juridical person.

**Produced Water** liquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations, with underground storage of hydrocarbons, or with solution mining for brine.

**Public Water System** means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

1. any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and
2. any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

**Release** the accidental or intentional spilling, pumping, leaking, pouring, emitting, leaching, escaping, or dumping of pollutants into or on any air, land, groundwater, or waters of the state. A release shall not include that which is allowed through a federal or state permit.

**Salt Cavern** see *solution-mined salt cavern*

**Salt Cavern Roof** the uppermost part of a salt cavern being just below the neck of the wellbore. The shape of the salt cavern roof may be flat or domed.

**Salt Cavern Waste Disposal Facility** any public, private, or commercial property, including surface and subsurface lands and appurtenances thereto, used for receiving, storing, and/or processing E&P waste for disposal into a solution-mined salt cavern.

*Salt Cavern Well*Ca well extending into the salt stock to facilitate the disposal of waste or other fluids into a salt cavern.

*Salt Dome*Ca diapiric, typically circular structure that penetrates, uplifts, and deforms overlying sediments as a result of the upward movement of a salt stock in the subsurface. Collectively, the salt dome includes the salt stock and any overlying uplifted sediments.

*Salt Stock*Ca typically cylindrical formation composed chiefly of an evaporite mineral that forms the core of a salt dome. The most common form of the evaporite mineral is halite known chemically as sodium chloride (NaCl). Cap rock shall not be considered a part of the salt stock.

*Solution-Mined Salt Cavern*Ca cavity created within the salt stock by dissolution with water.

*State*the State of Louisiana.

*Subsidence*Csee *ground subsidence*.

*Surface Casing*Cthe first string of casing installed in a well, excluding conductor casing.

*Transport Vehicle*Ca motor vehicle, rail freight car, freight container, cargo tank, portable tank, or vessel used for the transportation of E&P wastes or other materials for use or disposal at a salt cavern waste disposal facility.

*Transportation*Cthe movement of wastes or other materials from the point of generation or storage to the salt cavern waste disposal facility by means of commercial or private transport vehicle.

*Unauthorized Discharge*Ca continuous, intermittent, or one-time discharge, whether intentional or unintentional, anticipated or unanticipated, from any permitted or unpermitted source which is in contravention of any provision of the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.) or of any permit or license terms and conditions, or of any applicable regulation, compliance schedule, variance, or exception of the commissioner of Conservation.

*Underground Source of Drinking Water*Can aquifer or its portion:

1. which supplies any public water system; or
2. which contains a sufficient quantity of groundwater to supply a public water system; and
  - a. currently supplies drinking water for human consumption; or
  - b. contains fewer than 10,000 mg/1 total dissolved solids; and which is not an exempted aquifer.

*Waters of the State*Cboth surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters within the confines of the state, and all bordering waters, and the Gulf of Mexico.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:914 (June 2003).

### **§3103. General Provisions**

#### **A. Applicability**

1. These rules and regulations shall apply to all applicants, owners and/or operators of non-commercial salt cavern waste disposal facilities for disposal or proposed for disposal of E&P waste. However, where indicated, certain criteria found herein will also apply to commercial facility

operators, in addition to the requirements of LAC 43:XIX.501 et seq.

2. These rules and regulations do not address creation of a salt cavern, rather, only the disposal of E&P waste into a salt cavern. Rules governing the permitting, drilling, constructing, operating, and maintaining of a Class III brine solution mining well and cavern are codified in applicable sections of Statewide Order No. 29-N-1 (LAC 43:XVII, Subpart 1) or successor documents.

3. An applicant, owner and/or operator of a salt cavern being solution-mined for conversion to E&P waste disposal should become familiar with these rules and regulations to assure that the well and salt cavern shall comply with these rules and regulations.

#### **B. Prohibition of Unauthorized Disposal of Exploration and Production Waste**

1. Construction, conversion and/or operation of a salt cavern for disposal of E&P waste without obtaining a permit from the Office of Conservation is a violation of these rules and regulations and applicable laws of the State of Louisiana.

2. Any salt cavern well or salt cavern existing before the effective date of these Rules must comply with the requirements of these rules and regulations before converting the existing well and salt cavern to E&P waste disposal.

#### **C. Prohibition on Movement of Fluids into Underground Sources of Drinking Water**

1. No authorization by permit shall allow the movement of injected or disposed fluids into underground sources of drinking water or outside the salt stock. The owner or operator of the salt cavern waste disposal facility shall have the burden of showing that this requirement is met.

2. The Office of Conservation may take emergency action upon receiving information that injected or disposed fluid is present in or likely to enter an underground source of drinking water or may present an imminent and substantial endangerment to the environment, or the health, safety and welfare of the public.

D. Prohibition of Surface Discharges. The intentional, accidental, or otherwise unauthorized discharge of fluids, wastes, or process materials into manmade or natural drainage systems or directly into waters of the State is strictly prohibited.

#### **E. Identification of Underground Sources of Drinking Water and Exempted Aquifers**

1. The Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and shall protect as an underground source of drinking water, except where exempted under §3103.E.2 all aquifers or parts of aquifers that meet the definition of an underground source of drinking water. Even if an aquifer has not been specifically identified by the Office of Conservation, it is an underground source of drinking water if it meets the definition.

2. After notice and opportunity for a public hearing, the Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, all aquifers or parts thereof that the Office of Conservation

proposes to denote as exempted aquifers if they meet the following criteria:

- a. the aquifer does not currently serve as a source of drinking water; and
- b. the aquifer cannot now and shall not in the future serve as a source of drinking water because:
  - i. it is mineral, hydrocarbon, or geothermal energy producing or can be demonstrated to contain minerals or hydrocarbons that when considering their quantity and location are expected to be commercially producible;
  - ii. it is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical;
  - iii. it is so contaminated that it would be economically or technologically impractical to render said water fit for human consumption; or
  - iv. it is located in an area subject to severe subsidence or catastrophic collapse; or
- c. the total dissolved solids content of the groundwater is more than 3,000 mg/l and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

**F. Exceptions/Variations**

1. Except where noted in specific provisions of these rules and regulations, the Office of Conservation may allow, on a case-by-case basis, exceptions or variances to these rules and regulations. It shall be the obligation of the applicant, owner, or operator to show that the requested exception or variance shall not create an increased endangerment to the environment, or the health, safety and welfare of the public. The applicant, owner, or operator shall submit a written request to the Office of Conservation detailing the reason for the requested exception or variance. No deviation from the requirements of these rules or regulations shall be undertaken by the applicant, owner, or operator without prior written authorization from the Office of Conservation.

2. Granting of exceptions or variances to these rules and regulations shall only be considered upon proper showing by the applicant, owner, or operator at a public hearing that such exception or variance is reasonable, justified by the particular circumstances, and consistent with the intent of these rules and regulations regarding physical and environmental safety and the prevention of waste. The requester of the exception or variance shall be responsible for all costs associated with a public hearing.

**G Prohibition Through Oilfield Site Restoration Fund.** Without exception or variance to these rules and regulations, no solution-mined salt cavern or associated well shall be used for exploration and production waste disposal if the well or salt cavern was previously plugged and abandoned by or where site restoration has occurred pursuant to funding provided through the Oilfield Site Restoration Fund, R.S. 30:80 et seq. (Act 404 of 1993).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:4 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:916 (June 2003).

**§3105. Permit Requirements**

**A. Applicability.** No person shall convert or operate a non-commercial salt cavern waste disposal facility without

first obtaining written authorization (permit) from the Office of Conservation.

**B. Application Required.** Applicants for a non-commercial salt cavern waste disposal facility, permittees with expiring permits, or any person required to have a permit shall complete, sign, and submit one original application form with required attachments and documentation and two copies of the same to the Office of Conservation. The complete application shall contain all information necessary to show compliance with applicable State laws and these regulations.

**C. Who Applies.** It is the duty of the owner or proposed owner of a facility or activity to submit a permit application and obtain a permit. When a facility or activity is owned by one person and operated by another, it is the duty of the operator to file and obtain a permit.

**D. Signature Requirements.** All permit applications shall be signed as follows.

1. **Corporations.** By a principle executive officer of at least the level of vice-president, or duly authorized representative of that person if the representative performs similar policy making functions for the corporation. A person is a duly authorized representative only if:

a. the authorization is made in writing by a principle executive officer of at least the level of vice-president;

b. the authorization specifies either an individual or position having responsibility for the overall operation of the salt cavern waste disposal facility, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. the written authorization is submitted to the Office of Conservation.

2. **Partnership or Sole Proprietorship.** By a general partner or proprietor, respectively; or

3. **Public Agency.** By either a principle executive officer or a ranking elected official of a municipality, state, federal, or other public agency.

**E. Signature Reauthorization.** If an authorization under §3105.D is no longer accurate because a different individual or position has responsibility for the overall operation of the salt cavern waste disposal facility, a new authorization satisfying the signature requirements must be submitted to the Office of Conservation before or concurrent with any reports, information, or applications required to be signed by an authorized representative.

**F. Certification.** Any person signing a document under §3105.D shall make the following certification on the application:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment."

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:917 (June 2003).

**§3107. Application Content**

A. The following minimum information required in §3107 shall be submitted in a permit application for a non-commercial salt cavern E&P waste disposal facility. The applicant shall also refer to the appropriate application form for any additional information that may be required.

B. Administrative information:

1. all required state application form(s);
2. the nonrefundable application fee(s) and public hearing fee;
3. the name, mailing address, and physical address of the salt cavern waste disposal facility;
4. the operator's name, address and telephone number;
5. ownership status as federal, state, private, public, or other entity;
6. a brief description of the nature of the business associated with the activity;
7. list of all permits or construction approvals that the applicant has received or applied for and which specifically affect the legal or technical ability of the applicant to undertake the activity or activities to be conducted by the applicant under the permit being sought;
8. a copy of the title to the property for the salt cavern waste disposal facility. If a lease, option to lease, or other agreement is in effect on the property, a copy of this instrument shall be included with the application;
9. acknowledgment as to whether the facility is located on Indian lands or other lands under the jurisdiction or protection of the federal government, or whether the facility is located on state water bottoms or other lands owned by or under the jurisdiction or protection of the State of Louisiana;
10. documentation of financial responsibility and insurance or documentation of the method by which proof of financial responsibility and insurance will be provided as required in §3109.B. Where applicable, include copies of a draft letter of credit, bond, or any other evidence of financial responsibility acceptable to the Office of Conservation. Before making a final permit decision, final (official) documentation of financial responsibility and insurance must be submitted to and approved by the Office of Conservation;
11. names and addresses of all property owners within a one-half mile radius of the property boundary of the salt cavern waste disposal facility.

C. Maps and Related Information

1. a location plat of the salt cavern well prepared and certified by a registered civil engineer or registered land surveyor. The location plat shall be prepared according to standards of the Office of Conservation;
2. a topographic or other map extending at least one mile beyond the property boundaries of the salt cavern waste disposal facility depicting the facility and each well where fluids are injected underground; and those wells, springs, or surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;
3. the section, township and range of the area in which the salt cavern waste disposal facility is located and any parish, city or municipality boundary lines within one mile of the facility location;

4. a map showing the salt cavern well for which the permit is sought, the property boundaries of the salt cavern waste disposal facility, and the area of review. Within the area of review, the map shall show the number, name, and location of all existing producing wells, injection wells, abandoned wells and dry holes, public water systems and water wells. The map shall also show surface bodies of water, mines (surface and subsurface), quarries, and other pertinent surface features including residences and roads, and faults if known or projected;

5. maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the disposal formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed project;

6. generalized maps and cross sections illustrating the regional geologic setting;

7. structure contour mapping of the top-of-salt on a scale no smaller than one inch to five hundred feet;

8. vertical cross sections detailing the geologic structure of the local area. The cross sections shall be structural (as opposed to stratigraphic cross sections), be referenced to sea level, show the salt cavern well and the salt cavern being permitted, all surrounding salt caverns regardless of use and current status, conventional (room and pillar) mines, and all other bore holes and wells that penetrate the salt stock. Cross sections should be oriented to indicate the closest approach to surrounding salt caverns, bore holes, wells, etc., and shall extend at least one-mile beyond the edge of the salt stock. Any faulting in the area shall be illustrated on the cross sections such that the displacement of subsurface formations is accurately depicted; and

9. any other information required by the Office of Conservation to evaluate the salt cavern well, salt cavern, and related surface facility.

D. Area of Review Information. Refer to §115.E for area of review boundaries and exceptions. Only information of public record need be researched or submitted with the application, however, a diligent effort must be made to identify all wells and other manmade structures in response to the area of review requirements. The applicant shall provide the following information on all wells or structures within the defined area of review:

1. a discussion of the protocol used by the applicant to identify wells and manmade structures in the defined area of review;

2. a tabular listing of all known water wells in the area of review to include the name of the operator, well location, well depth, well use (domestic, irrigation, public, etc), and current well status (active, abandoned, etc.);

3. a tabular listing of all known wells (excluding water wells) in the area of review with penetrations into the cap rock or salt stock to include at a minimum:

a. operator name, well name and number, state serial number (if assigned), and well location;

b. well type and current well status (producing, disposal, storage, solution mining, shut-in, plugged and abandoned), date the well was drilled, and the date the current well status was assigned;

c. well depth, construction, completion (including completion depths), plug and abandonment data;

4. the following information shall be provided on manmade structures within the salt stock regardless of use, depth of penetration, or distance to the salt cavern well or salt cavern being the subject of the application:

a. a tabular listing of all salt caverns to include:

i. operator name, well name and number, state serial number, and well location;

ii. current or previous use of the salt cavern (waste disposal, hydrocarbon storage, solution mining), current status of the salt cavern (active, shut-in, plugged and abandoned), date the salt cavern well was drilled, and the date the current salt cavern status was assigned;

iii. salt cavern depth, construction, completion (including completion depths), plug and abandonment data;

b. a tabular listing of all conventional (dry or room and pillar) mining activities, whether active or abandoned. The listing shall include the following minimum items:

i. owner or operator name and address;

ii. current mine status (active, abandoned);

iii. depth and boundaries of mined levels;

iv. the closest distance of the mine in any direction to the salt cavern well and salt cavern.

E. Technical Information. The applicant shall submit, as an attachment to the application form, the following minimum information in technical report format:

1. results of a current salt cavern sonar survey and mechanical integrity pressure and leak tests;

2. corrective action plan required by §3115.F for wells or other manmade structures within the area of review that penetrate the salt stock but are not properly constructed, completed or plugged and abandoned;

3. plans for performing the geological and hydrogeological studies of §3115.B, C, and D. If such studies have already been done, submit the results obtained along with an interpretation of the results;

4. properly labeled schematic of the surface construction details of the salt cavern well to include the wellhead, gauges, flowlines, and any other pertinent details;

5. properly labeled schematic of the subsurface construction and completion details of the salt cavern well and salt cavern to include borehole diameters (bit size or calipered); all cemented casings with cement specifications, casing specifications (size, depths, etc.); all hanging strings showing sizes and depths set; total depth of well; top, bottom, and diameter of cavern; and any other pertinent details;

6. surface site diagram(s) drawn to scale to include details and locations of the entire salt cavern waste disposal facility layout (surface pumps, piping and instrumentation, controlled access roads, fenced boundaries, waste offloading, storage, treatment and processing areas, field office, monitoring and safety equipment and location of such equipment, required curbed or other retaining wall heights, etc.);

7. detailed plans and procedures to operate the salt cavern well, salt cavern, and related surface facilities in accordance with the following requirements:

a. the cavern and surface facility design requirements of §3117, including, but not limited to cavern spacing requirements and cavern coalescence;

b. the well construction and completion requirements of §3119, including, but not limited to open borehole surveys, casing and cementing, casing and casing seat tests, cased borehole surveys, hanging strings, and wellhead components and related connections;

c. the operating requirements of §3121, including, but not limited to cavern roof restrictions, blanket material, remedial work, well recompletion, multiple well caverns, cavern allowable operating pressure and rates, cavern displacement fluid management, and E&P waste storage;

d. the safety requirements of §3123, including, but not limited to an emergency action plan, controlled site access, facility identification, personnel, wellhead protection and identification, valves and flowlines, alarm systems, emergency shutdown valves, vapor monitoring and leak detection, gaseous vapor control, fire detection and suppression, systems test and inspections, and surface facility retaining walls and spill containment, as well as contingency plans to cope with all shut-ins or well failures to prevent the migration of contaminating fluids into underground sources of drinking water;

e. the monitoring requirements of §3125, including, but not limited to equipment requirements such as pressure gauges, pressure sensors and flow sensors, continuous recording instruments, vapor monitoring and leak detection, subsidence monitoring, and weather conditions (wind sock), as well as a description of methods that will be undertaken to monitor salt cavern growth due to undersaturated fluid injection. The plan shall incorporate method(s) for monitoring the salinity of all wastes disposed and the carrier fluid used in aiding the disposal of wastes;

f. the pre-operating requirements of §3127, specifically the submission of a completion report, and the information required therein, prior to accepting, storing, treating, processing or otherwise initiating waste disposal activities;

g. the mechanical integrity pressure and leak test requirements of §3129, including, but not limited to frequency of tests, test methods, submission of pressure and leak test results, notification of test failures and prohibition of waste acceptance during mechanical integrity failure;

h. the cavern configuration and capacity measurement procedures of §3131, including, but not limited to sonar caliper surveys, frequency of surveys, and submission of survey results;

i. the cavern waste disposal capacity exceedance requirements of §3133;

j. the requirements for inactive caverns in §3135;

k. the reporting requirements of §3137, including, but not limited to the information required in monthly waste receipts and operation reports;

l. the record retention requirements of §3139;

m. the closure and post-closure requirements of §3141, including, but not limited to closure plan requirements, notice of intent to close, standards for closure, and post-closure requirements; and

n. any other information pertinent to operation of the salt cavern E&P waste disposal facility, including, but not limited to procedures for waste characterization and testing, waste acceptance, waste storage, waste processing, waste disposal, any waiver for surface siting, monitoring equipment and safety procedures.



AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:918 (June 2003).

### **§3109. Legal Permit Conditions**

A. Signatories. All reports required by permit or regulation and other information requested by the Office of Conservation shall be signed as in applications by a person described in §3105.D or §3105.E.

#### **B. Financial Responsibility**

1. Closure and Post-Closure. The owner or operator of a non-commercial salt cavern E&P waste disposal facility shall maintain financial responsibility and the resources to close, plug and abandon and, where necessary, for post-closure care of the salt cavern well, salt cavern, and related facility as prescribed by the Office of Conservation. Evidence of financial responsibility shall be by submission of a surety bond, a letter of credit, certificate of deposit, or other instruments acceptable to the Office of Conservation. The amount of funds available shall be no less than the amount identified in the cost estimate of the closure plan of §3141.A and, if required, post-closure plan of §3141.B. Any financial instrument filed in satisfaction of these financial responsibility requirements shall be issued by and drawn on a bank or other financial institution authorized under state or federal law to operate in the State of Louisiana.

2. Insurance. All owners or operators of a salt cavern waste disposal facility shall provide evidence of sudden and accidental pollution liability insurance coverage for damages that may be caused to any property and party by the escape or discharge of any material or waste from the facility. Such evidence shall be provided to the Office of Conservation before the issuance of a permit for a salt cavern waste disposal facility.

a. Insurance responsibility may be evidenced by filing a certificate of sudden and accidental pollution liability insurance (indicating the required coverage is in effect and all deductible amounts applicable to the coverage), a letter of credit, bond, certificate of deposits issued by and drawn on Louisiana banks, or any other evidence of equivalent financial responsibility acceptable to the Office of Conservation.

b. The amount and extent of such sudden and accidental pollution liability insurance responsibility shall not be less than the face amounts per occurrence and/or aggregate occurrences as set by the Office of Conservation. The minimum coverage for sudden and accidental pollution liability insurance shall be \$5,000,000. The Office of Conservation retains the right to increase the minimum amount of insurance coverage as needed to prevent waste and to protect the environment, or the health, safety and welfare of the public.

c. Insurance coverage shall be issued by a company licensed to operate in the state of Louisiana. A copy of the insurance policy subsequently issued with any certificate of insurance is to be immediately filed with the Office of Conservation upon receipt by the operator.

3. Renewal of Financial Responsibility and Insurance. Any approved instrument of financial responsibility and insurance coverage shall be renewable yearly. Documentation of renewals shall be submitted to the Office of Conservation.

C. Duty to Comply. The operator must comply with all conditions of a permit. Any permit noncompliance is a violation of the permit and these rules and regulations and is grounds for enforcement action, permit termination, revocation and possible reissuance, modification, or denial of any future permit renewal applications. It shall be the duty of the operator to prove that continued operation of the salt cavern waste disposal facility shall not endanger the environment, or the health, safety and welfare of the public.

D. Duty to Halt or Reduce Activity. It shall not be a defense for an owner or operator in an enforcement action to claim it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of the permit.

E. Duty to Mitigate. The owner or operator shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from a noncompliance with the permit or these rules and regulations.

#### **F. Proper Operation and Maintenance**

1. The operator shall always properly operate and maintain all facilities and systems of storage, treatment, disposal, injection, withdrawal, and control (and related appurtenances) installed or used to achieve compliance with the permit or these rules and regulations. Proper operation and maintenance include effective performance (including well/cavern mechanical integrity), adequate funding, adequate operation, staffing and training, and adequate controls. This provision requires the operation of back-up, auxiliary facilities, or similar systems when necessary to achieve compliance with the conditions of the permit or these rules and regulations.

2. The operator shall address any unauthorized escape, discharge, or release of any material or waste from the salt cavern waste disposal facility, or part thereof, with a corrective action plan. The plan shall address the cause, delineate the extent, and determine the overall effects on the environment resulting from the escape, discharge, or release. The Office of Conservation shall require the operator to formulate a plan to remediate the escaped, discharged, or released material or waste if the material or waste is thought to have entered or has the possibility of entering an underground source of drinking water.

3. The Office of Conservation may immediately prohibit further operations if it determines that continued operations at a salt cavern waste disposal facility, or part thereof, may cause unsafe operating conditions, or endanger the environment, or the health, safety and welfare of the public. The prohibition shall remain in effect until it is determined that continued operations can and shall be conducted safely. It shall be the duty of the operator to prove that continued operation of the salt cavern waste disposal facility, or part thereof, shall not endanger the environment, or the health, safety and welfare of the public.

G. Inspection and Entry. Inspection and entry at a salt cavern waste disposal facility by Office of Conservation personnel shall be allowed as prescribed in R.S. of 1950, Title 30, Section 4.

H. Notification Requirements. The operator shall give written, and where required, verbal notice to the Office of Conservation concerning activities indicated in this Subsection.

1. Any change in the principal officers, management, owner or operator of the salt cavern waste disposal facility shall be reported to the Office of Conservation in writing within 10 days of the change.

2. Planned physical alterations or additions to the salt cavern well, salt cavern, surface facility or parts thereof that may constitute a modification or amendment of the permit.

3. Whenever there has been no disposal of waste into a salt cavern for 30 consecutive days or more, the operator shall notify the Office of Conservation in writing within seven days following the thirtieth day of the salt cavern becoming inactive (out of service). The notification shall include the date on which the salt cavern was removed from service, the reason for taking the salt cavern out of service, and the expected date that the salt cavern shall be returned to waste disposal service. See §3135 for additional requirements for inactive caverns.

4. The operator of a new or converted salt cavern well or salt cavern shall not begin waste disposal operations until the Office of Conservation has been notified of the following:

a. well construction or conversion is complete, including submission of the completion report and all supporting information (e.g., as-built diagrams, records, sampling and testing results, well and cavern tests, logs, etc.) required in §3127;

b. a representative of the commissioner has inspected the well and/or facility; and

c. the operator has received written approval from the Office of Conservation clearly stating salt cavern waste disposal operations may begin.

5. Noncompliance or anticipated noncompliance with the permit or applicable regulations including a failed mechanical integrity pressure and leak test of §3129.

6. Permit Transfer. A permit is not transferable to any person except after giving written notice to and receiving written approval from the Office of Conservation clearly stating that the permit has been transferred. This action may require modification or revocation and re-issuance of the permit to change the name of the operator and incorporate other requirements as may be necessary, including but not limited to financial responsibility.

7. Twenty-Four Hour Reporting

a. The operator shall report any noncompliance that may endanger the environment, or the health, safety and welfare of the public. Any information pertinent to the noncompliance shall be reported to the Office of Conservation by telephone within 24 hours from when the operator becomes aware of the circumstances. A written submission shall also be provided within five days from when the operator becomes aware of the circumstances. The written notification shall contain a description of the noncompliance and its cause, the periods of noncompliance including exact times and dates, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

b. The following additional information must also be reported within the 24-hour period:

i. monitoring or other information (including a failed mechanical integrity test of §3129) that suggests the waste disposal operation or disposed waste may cause an

endangerment to underground sources of drinking waters, oil, gas, other commercial mineral deposits (excluding the salt), neighboring salt operations of any kind, or movement outside the salt stock or salt cavern;

ii. any noncompliance with a regulatory or permit condition or malfunction of the waste injection/withdrawal system (including a failed mechanical integrity test of §3129) that may cause fluid migration into or between underground sources of drinking waters or outside the salt stock or salt cavern.

8. The operator shall give written notification to the Office of Conservation upon permanent conclusion of waste disposal operations into a salt cavern. Notification shall be given within seven days after concluding disposal operations.

9. The operator shall give written notification before abandonment (closure) of the salt cavern, salt cavern well, or related surface facility. Abandonment (closure) shall not begin before receiving written authorization from the Office of Conservation.

10. When the operator becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Office of Conservation, the operator shall promptly submit such facts and information.

I. Duration of Permits

1. Authorization to Operate. Authorization by permit to operate a salt cavern waste disposal facility shall be valid for the life of the facility, unless suspended, modified, revoked and reissued, or terminated for cause as described in §3111.K.

2. Authorization to Drill and Complete. Authorization by permit to drill and complete a new salt cavern well into an existing salt cavern shall be valid for one year from the effective date of the permit. If drilling and well completion is not completed in that time, the permit shall be null and void and the operator must obtain a new permit.

3. Authorization to Convert. Authorization by permit to convert an existing salt cavern well or salt cavern to waste disposal shall remain in effect for six months from the effective date of the conversion permit. If conversion has not begun within that time, the permit shall be null and void and the operator must obtain a new permit.

4. Extensions. The operator shall submit to the Office of Conservation a written request for an extension of the times of §3109.I.2 and §3109.I.3; however, the Office of Conservation shall approve the request only for extenuating circumstances. The operator shall have the burden of proving claims of extenuating circumstances.

J. Compliance Review. Cavern disposal facility permits shall be reviewed at least once every five years to determine compliance with applicable permit requirements and conditions. Commencement of the permit review process for each facility shall proceed as authorized by the Commissioner of Conservation.

K. Additional Conditions. The Office of Conservation may, on a case-by-case basis, impose any additional conditions or requirements as are necessary to protect the environment, the health, safety and welfare of the public, underground sources of drinking waters, oil, gas, or other mineral deposits (excluding the salt), and preserve the integrity of the salt dome.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:920 (June 2003).

### **§3111. Permitting Process**

A. **Applicability.** This Section contains procedures for issuing and transferring permits to operate a non-commercial salt cavern waste disposal facility. Any person required to have a permit shall apply to the Office of Conservation as stipulated in §3105. The Office of Conservation shall not issue a permit before receiving an application form and any required supplemental information showing compliance with these rules and regulations and that is administratively and technically completed to the satisfaction of the Office of Conservation.

#### **B. Notice of Intent to File Application**

1. The applicant shall make public notice that a permit application is to be filed with the Office of Conservation. A notice of intent shall be published at least 30 days but not more than 120 days before filing the permit application with the Office of Conservation. The applicant shall publish a new notice of intent if the application is not received by the Office of Conservation within the filing period.

2. The notice shall be published once in the official state journal, the official journal of the parish of the proposed project location, and, if different from the official parish journal, in a journal of general circulation in the area of the proposed project location. The cost for publishing the notice of intent shall be the responsibility of the applicant. The notice shall be published in bold-faced type, be not less than one-fourth page in size, and shall contain the following minimum information:

- a. name and address of the permit applicant and, if different, the facility to be regulated by the permit;
- b. the geographic location of the proposed project;
- c. name and address of the regulatory agency to process the permit action where interested persons may obtain information concerning the application or permit action;
- d. a brief description of the business conducted at the facility or activity described in the permit application including the method of storage, treatment, and/or disposal; and
- e. the nature and content of the proposed waste stream(s).

#### **C. Application Submission and Review**

1. The applicant shall complete, sign, and submit one original application form, with required attachments and documentation, and two copies of the same to the Office of Conservation. The complete application shall contain all information to show compliance with applicable state laws and these rules and regulations.

2. The applicant shall be notified if a representative of the Office of Conservation decides that a site visit is necessary for any reason in conjunction with the processing of the application. Notification may be either oral or written and shall state the reason for the visit.

3. If the Office of Conservation deems an application to be incomplete, deficient of information, or requires additional data, a notice of application deficiency indicating the information necessary to make the application complete shall be transmitted to the applicant.

4. The Office of Conservation shall deny an application if an applicant fails, refuses, is unable to respond adequately to the notice of application deficiency, or if the Office of Conservation determines that the proposed activity cannot be conducted safely. The Office of Conservation shall notify the applicant by certified mail of the decision denying the application.

D. **Public Hearing Requirements.** A public hearing is required for new applications and shall not be scheduled until administrative and technical review of an application has been completed to the satisfaction of the Office of Conservation.

#### **1. Notice by Office of Conservation**

a. Upon acceptance of a permit application as complete and meeting the administrative and technical requirements of these rules and regulations, the Office of Conservation shall fix a time, date, and location for a public hearing. The public hearing shall be held in the parish of the proposed project location. The cost of the public hearing shall be set by LAC 43:XIX.Chapter 7 (Fees, as amended) and is the responsibility of the applicant.

b. The Office of Conservation shall provide notice of a scheduled hearing by mailing a copy of the notice to the applicant, property owners immediately adjacent to the proposed project, operators of existing projects located on or within the salt stock of the proposed project; United States Environmental Protection Agency; Louisiana Department of Wildlife and Fisheries; Louisiana Department of Environmental Quality; Louisiana Office of Coastal Management; Louisiana Office of Conservation, Pipeline Division, Louisiana Department of Culture, Recreation and Tourism, Division of Archaeology; the governing authority for the parish of the proposed project; and any other interested parties.

#### **2. Notice by Applicant**

a. Public notice of a hearing shall be published by the applicant in the legal ad section of the official state journal, the official journal of the parish of the proposed project location, and, if different from the official parish journal, in a journal of general circulation in the area of the proposed project location, not less than 30 days before the scheduled hearing.

b. The applicant shall file at least one copy of the complete permit application with the local governing authority of the parish of the proposed project location at least 30 days before the scheduled public hearing to be available for public review.

c. One additional copy of the complete permit application shall be filed by the applicant in a public library in the parish and in close proximity to the proposed project location.

3. **Contents.** Public notices shall contain the following minimum information:

- a. name and address of the permit applicant and, if different, the facility or activity regulated by the permit;
- b. name and address of the regulatory agency processing the permit action;
- c. name, address, and phone number of a person within the regulatory agency where interested persons may obtain information concerning the application or permit action;

- d. a brief description of the business conducted at the facility or activity described in the permit application;
- e. a brief description of the public comment procedures and the time and place of the public hearing;
- f. a brief description of the nature and purpose of the public hearing.

E. Draft Permit. The Office of Conservation shall prepare a draft permit (Order) after accepting a permit application as meeting the administrative and technical requirements of these rules and regulations. Draft permits shall be accompanied by a fact sheet, be publicly noticed, and made available for public comment.

F. Fact Sheet. The Office of Conservation shall prepare a fact sheet for every draft permit. It shall briefly set forth principal facts and significant factual, legal, and policy questions considered in preparing the draft permit.

- 1. The fact sheet may include:
  - a. a brief description of the type of facility or activity that is the subject of the draft permit or application;
  - b. the type and proposed quantity of material to be injected;
  - c. a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provision;
  - d. a description of the procedures for reaching a final decision on the draft permit or application including the ending date of the public comment period of §3111.H, the address where comments shall be received, and any other procedures whereby the public may participate in the final decision;
  - e. the name and telephone number of a person within the permitting agency to contact for additional information.

2. The fact sheet shall be distributed to the permit applicant and, on request, to any interested person.

G. Public Hearing. Public hearings for permitting activities shall be held in the parish of the proposed project location. The cost of the public hearing shall be the responsibility of the applicant.

- 1. The public hearing shall be fact finding in nature and not subject to the procedural requirements of the Louisiana Administrative Procedure Act. All public hearings shall be publicly noticed as required by these rules and regulations.
- 2. At the hearing, any person may make oral statements or submit written statements and data concerning the application or permit action being the basis of the hearing. Reasonable limits may be set upon the time allowed for oral statements; therefore, submission of written statements may be required. The hearing officer may extend the comment period by so stating before the close of the hearing.
- 3. A transcript shall be made of the hearing and such transcript shall be available for public review.

H. Public Comments, Response to Comments, and Permit Issuance

1. Any interested person may submit written comments concerning the permitting activity during the public comment period. All comments pertinent and significant to the permitting activity shall be considered in making the final permit decision.

2. The Office of Conservation shall issue a response to all pertinent and significant comments as an attachment to and at the time of final permit decision. The final permit with response to comments shall be made available to the public.

3. The Office of Conservation shall issue a final permit decision within 90 days following the close of the public comment period; however, this time may be extended due to the nature, complexity, and volume of public comments received.

4. A final permit decision shall be effective on the date of issuance.

5. Approval or the granting of a permit to construct a salt cavern waste disposal facility or salt cavern well shall not become final until a certified copy of a lease or proof of ownership of the property of the proposed project location is submitted to the Office of Conservation.

I. Permit Application Denial

1. The Office of Conservation may refuse to issue, reissue, or reinstate a permit or authorization if an applicant or operator has delinquent, finally determined violations of the Office of Conservation or unpaid penalties or fees, or if a history of past violations demonstrates the applicant's or operator's unwillingness to comply with permit or regulatory requirements.

2. If a permit application is denied, the applicant may request a review of the Office of Conservation's decision to deny the permit application. Such request shall be made in writing and shall contain facts or reasons supporting the request for review.

3. Grounds for permit application denial review shall be limited to the following reasons:

- a. the decision is contrary to the laws of the State, applicable regulations, or evidence presented in or as a supplement to the permit application;
- b. the applicant has discovered since the permit application public hearing or permit denial, evidence important to the issues that the applicant could not with due diligence have obtained before or during the initial permit application review;
- c. there is a showing that issues not previously considered should be examined so as to dispose of the matter; or
- d. there is other good ground for further consideration of the issues and evidence in the public interest.

J. Permit Transfer

1. Applicability. A permit may be transferred to a new owner or operator only upon written approval from the Office of Conservation. Written approval must clearly read that the permit has been transferred. It is a violation of these rules and regulations to operate a salt cavern waste disposal facility without a permit or other authorization if a person attempting to acquire a permit transfer allows operation of the salt cavern waste disposal facility before receiving written approval from the Office of Conservation.

2. Procedures

a. The proposed new owner or operator must apply for and receive an operator code by submitting a completed Organization Report (Form OR-1), or subsequent form, to the Office of Conservation.

b. The current operator shall submit an application for permit transfer at least 30 days before the proposed permit transfer date. The application shall contain the following:

- i. name and address of the proposed new owner or operator;
- ii. date of proposed permit transfer; and
- iii. a written agreement between the existing and new owner or operator containing a specific date for transfer of permit responsibility, insurance coverage, financial responsibility, and liability between them.

c. If no agreement described in §3111.J.2.b.iii above is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation will shift from the existing operator to the new operator on the date the transfer is approved.

d. The new operator shall submit an application for a change of operator using Form MD-10-R-A, or subsequent form, to the Office of Conservation containing the signatories of §3105.D and E along with the appropriate filing fee.

e. The new operator shall submit evidence of financial responsibility under §3109.B.

f. Any additional information as may be required to be submitted by these regulations or the Office of Conservation.

K. Permit Suspension, Modification, Revocation and Reissuance, Termination. This subsection sets forth the standards and requirements for applications and actions concerning suspension, modification, revocation and reissuance, termination, and renewal of permits. A draft permit must be prepared and other applicable procedures must be followed if a permit modification satisfies the criteria of this subsection. A draft permit, public notification, or public participation is not required for minor permit modifications of §3111.K.5.

1. Permit Actions

a. The permit may be suspended, modified, revoked and reissued, or terminated for cause.

b. The operator shall furnish the Office of Conservation within a predetermined time any information that the Office of Conservation may request to determine whether cause exists for suspending, modifying, revoking and reissuing, or terminating a permit, or to determine compliance with the permit. Upon request, the operator shall furnish the Office of Conservation with copies of records required to be kept by the permit.

c. The Office of Conservation may, upon its own initiative or at the request of any interested person, review any permit to determine if cause exists to suspend, modify, revoke and reissue, or terminate the permit for the reasons specified in §§3111.K.2, 3, 4, 5, and 6. All requests shall be in writing and shall contain facts or reasons supporting the request.

d. If the Office of Conservation decides the request is not justified, the person making the request shall be sent a brief written response giving a reason for the decision. Denials of requests for suspension, modification, revocation and reissuance, or termination are not subject to public notice, public comment, or public hearings.

e. If the Office of Conservation decides to suspend, modify or revoke and reissue a permit under §§3111.K.2, 3,

4, 5, and 6, additional information may be requested and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Office of Conservation shall require the submission of a new application.

f. The suitability of an existing salt cavern well, salt cavern, or salt cavern waste disposal facility location shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards suggest continued operation at the site endangers the environment, or the health, safety and welfare of the public which was unknown at the time of permit issuance. If the salt cavern well, salt cavern, or salt cavern waste disposal facility location is no longer suitable for its intended purpose, it shall be closed according to applicable sections of these rules and regulations.

2. Suspension of Permit. The Office of Conservation may suspend the operator's right to accept additional E&P wastes, or to treat, process, store, or dispose such waste until violations are corrected. If violations are corrected, the Office of Conservation may lift the suspension. Suspension of a permit and/or subsequent corrections of the causes for the suspension by the operator shall not preclude the Office of Conservation from terminating the permit, if necessary. The Office of Conservation shall issue a Notice of Violation (NOV) to the operator, by certified mail, return receipt requested, of violations of the permit or these regulations that list the specific violations. If the operator fails to comply with the NOV by correcting the cited violations within the date specified in the NOV, the Office of Conservation shall issue a Compliance Order requiring the violations to be corrected within a specified time and may include an assessment of civil penalties. If the operator fails to take corrective action within the time specified in the Compliance Order, the Office of Conservation shall assess a civil penalty, and shall suspend, revoke, or terminate the permit.

3. Modification or Revocation and Reissuance of Permits. The following are causes for modification and may be causes for revocation and reissuance of permits.

a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

b. Information. The Office of Conservation has received information pertinent to the permit. 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. Cause shall include any information indicating that cumulative effects on the environment, or the health, safety and welfare of the public are unacceptable.

c. New Regulations

i. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued and conformance with the changed standards or regulations is necessary for the protection of the environment, or the health, safety and

welfare of the public. Permits may be modified during their terms when:

(a). the permit condition requested to be modified was based on a promulgated regulation or guideline;

(b). there has been a revision, withdrawal, or modification of that portion of the regulation or guideline on which the permit condition was based; or

(c). an operator requests modification within 90 days after Louisiana Register notice of the action on which the request is based.

ii. The permit may be modified as a minor modification without providing for public comment when standards or regulations on which the permit was based have been changed by withdrawal of standards or regulations or by promulgation of amended standards or regulations which impose less stringent requirements on the permitted activity or facility and the operator requests to have permit conditions based on the withdrawn or revised standards or regulations deleted from his permit.

iii. For judicial decisions, a court of competent jurisdiction has remanded and stayed Office of Conservation regulations or guidelines and all appeals have been exhausted, 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 operator to have permit conditions based on the remanded or stayed standards or regulations deleted from his permit.

d. Compliance Schedules. The Office of Conservation determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the operator has little or no control and for which there is no reasonable available remedy.

4. 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 §3111.K.6, and the Office of Conservation determines that modification or revocation and reissuance is appropriate.

b. The Office of Conservation has received notification of a proposed transfer of the permit and the transfer is determined not to be a minor permit modification.

c. A determination that the waste being disposed into a salt cavern is not E&P waste as defined in §3101 or LAC 43:XIX.501, or subsequent revisions, either because the definition has been revised or because a previous determination has been changed.

5. Minor Modifications of Permits. The Office of Conservation may modify a permit to make corrections or allowances for changes in the permitted activity listed in this subsection without issuing a draft permit and providing for public participation. Minor modifications may only:

a. correct administrative or make informational changes;

b. correct typographical errors;

c. amend the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities;

d. change an interim compliance date in a schedule of compliance, provided the new date does not interfere with attainment of the final compliance date requirement;

e. allow for a change in ownership or operational control of a salt cavern waste disposal facility where the Office of Conservation determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Office of Conservation;

f. change quantities or types of waste or other material disposed into the salt cavern which are within the capacity of the salt cavern waste disposal facility and, in the judgement of the Office of Conservation, would not interfere with the operation of the facility or its ability to meet other conditions prescribed in the permit, and would not change the waste classification of the disposed material;

g. change construction requirements or plans approved by the Office of Conservation provided that any such alteration is in compliance with these rules and regulations. No such changes may be physically incorporated into construction of the salt cavern well, salt cavern, or surface facility before written approval from the Office of Conservation; or

h. amend a closure or post-closure plan.

#### 6. Termination of Permits

a. The Office of Conservation may terminate a permit during its term for the following causes:

i. noncompliance by the operator with any condition of the permit;

ii. the operator's failure in the application or during the permit issuance process to fully disclose all relevant facts, or the operator's misrepresentation of any relevant facts at any time; or

iii. a determination that continued operation of the permitted activity cannot be conducted in a way that is protective of the environment, or the health, safety and welfare of the public.

b. If the Office of Conservation decides to terminate a permit, such shall only be done after a public hearing.

c. The Office of Conservation may alternatively decide to modify or revoke and reissue a permit for the causes in §3111.K.6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:922 (June 2003).

#### §3113. Location Criteria

A. No physical structure at a salt cavern waste disposal facility shall be located within 500 feet of a residential, commercial, or public building. Adherence to this requirement may be waived by the owner of the building. For a public building, the waiver shall be provided by the responsible administrative body. Any such waiver shall be in writing and be made part of the permit application. Examples of physical structures include, but are not limited to, the wellhead of the salt cavern well, waste storage, waste transfer and waste processing areas, onsite buildings, pumps, etc. An exception to the 500-foot restriction may be granted upon request for the placement of instruments or equipment required for safety or environmental monitoring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:925 (June 2003).

**§3115. Site Assessment**

A. Applicability. This section applies to all applicants, owners and/or operators of salt cavern waste disposal facilities. The applicant, owner and/or operator shall be responsible for showing that disposal of E&P wastes into the salt cavern shall be accomplished using good engineering and geologic practices for salt cavern operations to preserve the integrity of the salt stock and overlying sediments. This shall include, but not be limited to:

1. an assessment of the geological, geomechanical, geochemical, geophysical properties of the salt stock;
2. stability of the salt cavern design (particularly regarding its size, shape, depth, and operating parameters);
3. physical and chemical characteristics of the waste;
4. the amount of separation between the salt cavern of interest and adjacent caverns and structures within the salt stock; and
5. the amount of separation between the outermost salt cavern wall and the periphery of the salt stock.

B. Geological Studies and Evaluations. The applicant shall do a thorough geological, geophysical, geomechanical, and geochemical evaluation of the salt stock to determine its suitability for waste disposal, stability of the salt cavern under the proposed set of operating conditions, and where applicable, the structural integrity of the salt stock between an adjacent cavern and salt periphery under the proposed set of operating conditions. The applicant shall provide a listing of data or information used to characterize the structure and geometry of the salt stock.

1. Where applicable, the geologic evaluation shall include, but should not be limited to:
  - a. geologic mapping of the structure of the salt stock and any cap rock;
  - b. geologic history of salt movement;
  - c. an assessment of the impact of possible anomalous zones (salt spines, shear planes, etc.) on the salt cavern well or salt cavern;
  - d. deformation of the cap rock and strata overlying the salt stock;
  - e. investigation of the upper salt surface and adjacent areas involved with salt dissolution;
  - f. cap rock formation and any non-vertical salt movement.

2. The applicant shall perform a thorough hydrogeological study on strata overlying the salt stock to determine the occurrence of the lowermost underground source of drinking water immediately above and in the vicinity of the salt stock.

3. The applicant shall investigate regional tectonic activity and the potential impact (including ground subsidence) of the waste disposal project on surface and subsurface resources.

C. Core Sampling.

1. At least one well at the site of the salt cavern waste disposal facility (or the salt dome) shall be or shall have been cored over sufficient depth intervals to yield representative samples of the subsurface geologic environment. This shall include coring of the salt stock and may include coring of overlying formations, including any

cap rock. Cores should be obtained using the whole core method. Core acquisition, core handling, and core preservation shall be done according to standard field sampling practices considered acceptable for laboratory tests of recovered cores.

2. Data from previous coring projects may be used instead of actual core sampling provided the data is specific to the salt dome of interest. If site-specific data is unavailable, data may be obtained from sources that are not specific to the area as long as the data can be shown to closely approximate the properties of the salt dome of interest. It shall be the responsibility of the applicant to make a satisfactory demonstration that data obtained from other sources are applicable to the salt dome of interest.

D. Core Analyses and Laboratory Tests. Analyses and tests shall consider the characteristics of the injected materials and should provide data on the salt's geomechanical, geophysical, geochemical, mineralogical properties, microstructure, and where necessary, potential for adjacent salt cavern connectivity, with emphasis on salt cavern shape and the operating conditions. All laboratory tests, experimentation, and numeric modeling shall be conducted using methods that simulate the proposed operating conditions of the salt cavern. Test methods shall be selected to define the deformation and strength properties and characteristics of the salt stock under salt cavern operating conditions.

E. Area of Review. A thorough evaluation shall be undertaken of both surface and subsurface activities in the defined area of review of the individual salt cavern well or project area that may influence the integrity of the salt stock, salt cavern well, and salt cavern, or contribute to the movement of injected fluids outside the salt cavern, wellbore, or salt stock.

1. Surface Delineation. The area of review for a salt cavern well shall be a fixed radius around the wellbore of not less than one-half mile. Exception shall be noted as shown in §§3115.E.2.c and d below.

2. Subsurface Delineation. At a minimum, the following shall be identified within the area of review:

- a. all known active, inactive, and abandoned wells within the area of review with known depth of penetration into the cap rock or salt stock;
- b. all known water wells within the area of review;
- c. all salt caverns within the salt stock regardless of usage, depth of penetration, or distance to the proposed salt cavern well or salt cavern;
- d. all conventional (dry or room and pillar) mining activity either active or abandoned occurring anywhere within the salt stock regardless of distance to the proposed salt cavern well or salt cavern.

F. Corrective Action

1. For manmade structures identified in the area of review that are not properly constructed, completed, or plugged and abandoned, the applicant shall submit a corrective action plan consisting of such steps, procedures, or modifications as are necessary to prevent the movement of fluids outside the salt cavern or into underground sources of drinking water.

a. Where the plan is adequate, the provisions of the corrective action plan shall be incorporated into the permit as a condition.

b. Where the plan is inadequate, the Office of Conservation shall require the applicant to revise the plan or the application shall be denied.

2. Any permit issued for an existing salt cavern well or salt cavern for which corrective action is required shall include a schedule of compliance for complete fulfillment of the approved corrective action procedures. If the required corrective action is not completed as prescribed in the schedule of compliance, the permit shall be suspended, modified, revoked and possibly reissued, or terminated according to these rules and regulations.

3. No permit shall be issued for a new salt cavern well until all required corrective action obligations have been fulfilled.

4. The Office of Conservation may prescribe additional requirements for corrective action beyond those submitted by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:926 (June 2003).

### **§3117. Cavern and Surface Facility Design Requirements**

A. This section provides general standards for design of salt caverns to assure that project development can be conducted in a reasonable, prudent, and a systematic manner and shall stress physical and environmental safety. The cavern design shall be modified where necessary to conform with good engineering and geologic practices.

#### **B. Cavern Spacing Requirements**

1. Property Boundary. The wellhead and borehole shall be located such that the salt cavern at its maximum diameter shall not extend closer than 100 feet to the property boundary of the salt cavern waste disposal facility.

2. Adjacent Structures Within the Salt. As measured in any direction, the minimum separation between walls of adjacent salt caverns or between the walls of the salt cavern and any manmade structure within the salt stock shall not be less than 200 feet.

3. Salt Periphery. Without exception or variance to these rules and regulations, the minimum separation between the walls of a salt cavern at any point and the periphery of the salt stock shall not be less than 300 feet.

C. Cavern Coalescence. The Office of Conservation may permit the use of coalesced salt caverns for waste disposal. It shall be the duty of the applicant, owner or operator to demonstrate that operation of coalesced salt caverns under the proposed cavern operating conditions can be accomplished in a physical and environmentally safe manner. The intentional subsurface coalescing of adjacent salt caverns must be requested by the applicant, owner or operator in writing and be approved by the Office of Conservation before beginning or resumption of salt cavern waste disposal operations. Approval for salt cavern coalescence shall only be considered upon a showing by the applicant, owner or operator that the stability and integrity of the salt cavern and salt stock shall not be compromised and that salt cavern waste disposal operations can be conducted in a physical and environmentally safe manner. If the design of adjacent salt caverns should include approval for the subsurface coalescing of adjacent salt caverns, the minimum

spacing requirement of §3117.B.2 above shall not apply to the coalesced salt caverns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:927 (June 2003).

### **§3119. Well Construction and Completion**

#### **A. General Requirements**

1. All materials and equipment used in the construction of the salt cavern well and related appurtenances shall be designed and manufactured to exceed the operating requirements of the specific project. Consideration shall be given to depth and lithology of all subsurface geologic zones, corrosiveness of formation fluids, hole size, anticipated ranges and extremes of operating conditions, physical and behavioral characteristics of the injected and disposed material under the specific range of operating conditions, subsurface temperatures and pressures, type and grade of cement, and projected life of the salt cavern well.

2. All salt cavern wells and salt caverns shall be designed, constructed, completed, and operated to prevent the escape of injected or disposed materials out of the salt stock, into an underground source of drinking water, or otherwise create or cause pollution or endanger the environment or public safety. All phases of design, construction, completion, and testing shall be prepared and supervised by qualified personnel.

#### **B. Open Borehole Surveys**

1. Open hole wireline surveys that delineate subsurface lithologies, formation tops (including top of cap rock and salt), formation fluids, formation porosity, and fluid resistivities shall be done on wells from total well depth to either ground surface or base of conductor pipe. Wireline surveys shall be presented with gamma-ray and, where applicable, spontaneous potential curves. All surveys shall be presented on a scale of one inch to one hundred feet and a scale of five inches to one hundred feet.

2. Gyroscopic multi-shot surveys of the borehole shall be taken at intervals not to exceed every 100 feet of drilled borehole.

3. Where practicable, caliper logging to determine borehole size for cement volume calculations shall be done before running casings.

C. Casing and Cementing. Except as specified below, the wellbore of the salt cavern shall be cased, completed, and cemented according to rules and regulations of the Office of Conservation and good petroleum industry engineering practices for wells of comparable depth that are applicable to the same locality of the salt cavern. Design considerations for casings and cementing materials and methods shall address the nature and characteristics of the subsurface environment, the nature of injected and disposed materials, the range of conditions under which the well, cavern, and facility shall be operated, and the expected life of the well including closure and post-closure.

1. Cementing shall be by the pump-and-plug method or another method approved by the Office of Conservation and shall be circulated to the surface. Circulation of cement may be done by staging.

a. For purposes of these rules and regulations, circulated (cemented) to the surface shall mean that actual



cement returns to the surface were observed during the primary cementing operation. A copy of the cementing company's job summary or cementing ticket indicating returns to the surface shall be submitted as part of the pre-operating requirements of §3127.

b. If returns are lost during cementing, the owner or operator shall have the burden of showing that sufficient cement isolation is present to prevent the upward movement of injected or disposed material into zones of porosity or transmissive permeability in the overburden along the wellbore and to protect underground sources of drinking water.

2. Surface casing shall be set to a depth into a confining bed below the base of the lowermost underground source of drinking water. Surface casing shall be cemented to surface where practicable.

3. All salt cavern wells shall be cased with a minimum of two casings cemented into the salt. The surface casing shall not be considered one of the two casings of this Subparagraph.

4. New wells drilled into an existing salt cavern shall have an intermediate casing and a final cemented casing set into the salt. The final cemented casing shall be set a minimum distance of 300 feet into the salt and shall make use of a sufficient number of casing centralizers.

5. The following applies to wells existing in salt caverns before the effective date of these rules and regulations and are being converted to salt cavern waste disposal. If the design of the well or cavern precludes having distinct intermediate and final casing seats cemented into the salt, the wellbore shall be cased with two concentric casings run from the surface of the well to a minimum distance of 300 feet into the salt. The inner casing shall be cemented from its base to surface.

6. The intermediate and final casings shall be cemented from their respective casing seats to the surface when practicable.

D. Casing and Casing Seat Tests. When doing tests under this paragraph, the owner or operator shall monitor and record the tests by use of a surface readout pressure gauge and a chart or a digital recorder. All instruments shall be properly calibrated and in good working order. If there is a failure of the required tests, the owner or operator shall take necessary corrective action to obtain a passing test.

1. Casing. After cementing each casing, but before drilling out the respective casing shoe, all casings shall be hydrostatically pressure tested to verify casing integrity and the absence of leaks. For surface casing, the stabilized test pressure applied at the surface shall be a minimum of 500 pounds per square inch gauge (PSIG). The stabilized test pressure applied at the surface for all other casings shall be a minimum of 1,000 PSIG. All casing test pressures shall be maintained for one hour after stabilization. Allowable pressure loss is limited to five percent of the test pressure over the stabilized test duration.

2. Casing Seat. The casing seat and cement of intermediate and production casings shall each be hydrostatically pressure tested after drilling out the casing shoe. At least 10 feet of formation below the respective casing shoes shall be drilled before the test. The test pressure applied at the surface shall be the greater of 1,000 PSIG or 125 percent of the maximum predicted salt cavern operating

pressure. The appropriate test pressure shall be maintained for one hour after pressure stabilization. Allowable pressure loss is limited to five percent of the test pressure over the stabilized test duration.

3. Casing or casing seat test pressures shall never exceed a pressure gradient equivalent to 0.80 PSI per foot of vertical depth at the respective casing seat or exceed the known or calculated fracture gradient of the appropriate subsurface formation. The test pressure shall never exceed the rated burst or collapse pressures of the respective casings.

E. Cased Borehole Surveys. A cement bond with variable density log (or similar cement evaluation tool) and a temperature log shall be run on all casings. The Office of Conservation may consider requests for allowances for wireline logging in large diameter casings or justifiable special conditions.

1. It shall be the duty of the well applicant, owner or operator to prove adequate cement isolation on all cemented casings. Remedial cementing shall be done before proceeding with further well construction, completion, or conversion if adequate cement isolation between the salt cavern well and other subsurface zones cannot be demonstrated.

2. A casing inspection log (or similar log) shall be run on the final cemented casing.

F. Hanging Strings. Without exception or variance to these rules and regulations, all salt cavern wells shall be completed with at least two hanging strings. One hanging string shall be for waste injection; the second hanging string shall be for displacing fluid out of the salt cavern from below the blanket material. Hanging strings shall be designed with a collapse, burst, and tensile strength rating conforming to all expected operating conditions, including flow induced vibrations. The design shall also consider the physical and chemical characteristics of fluids placed into and/or withdrawn from the salt cavern.

G. Wellhead Components and Related Connections. All wellhead components, valves, flanges, fittings, flowlines, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. Selection and design criteria for components shall consider the physical and chemical characteristics of fluids placed into and/or withdrawn from the salt cavern under the specific range of operating conditions, including flow induced vibrations. The fluid withdrawal side of the wellhead (if applicable) shall be rated for the same pressure as the waste injection side. All components and related connections shall be maintained in good working order and shall be periodically inspected by the operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:927 (June 2003).

### **§3121. Operating Requirements**

#### **A. Cavern Roof**

1. Without exception or variance to these rules and regulations, no salt cavern shall be used for E&P waste disposal if the salt cavern roof has grown above the top of the salt stock. The operation of an already permitted salt

cavern shall cease and shall not be allowed to continue if information becomes available that shows this condition exist. The Office of Conservation may order the well and salt cavern closed according to an approved closure and post-closure plan.

2. The Office of Conservation may consider the use of a salt cavern for waste disposal if information exists that shows the salt cavern roof has grown vertically above the depth of the salt cavern well's deepest cemented casing seat. However, the salt cavern roof shall be below the top of the salt stock, the owner/operator shall meet the provisions for proving well/cavern mechanical integrity of §3129 and cavern configuration and capacity of §3131, and the owner/operator shall submit and carry out a plan for doing cavern roof monitoring. It shall be the duty of the well applicant or owner or operator to prove that operation of the salt cavern under this condition shall not endanger the environment, or the health, safety and welfare of the public.

B. Blanket Material. Before beginning waste disposal operations, a blanket material shall be placed into the salt cavern to prevent unwanted leaching of the cavern roof. The blanket material shall consist of crude oil, diesel, mineral oil, or other fluid possessing similar noncorrosive, nonsoluble, low-density properties. The blanket material shall be placed between the outermost hanging string and innermost cemented casing of the salt cavern and shall be of sufficient volume to coat the entire cavern roof. The cavern roof and level of the blanket material shall be monitored at least once every five years by running a density interface survey or using an alternative method approved by the Office of Conservation.

C. Remedial Work. No remedial work or repair work of any kind shall be done on the salt cavern well or salt cavern without prior authorization from the Office of Conservation. The provision for prior authorization shall also extend to doing mechanical integrity pressure and leak tests and sonar caliper surveys. The owner or operator or its agent shall submit a valid work permit request form (Form UIC-17 or successor). Before beginning well or cavern remedial work, the pressure in the salt cavern shall be relieved, as practicable, to zero pounds per square inch as measured at the surface.

D. Well Recompletion/Casing Repair. The following applies to salt cavern wells where remedial work results from well upgrade, casing wear, or similar condition. For each paragraph below, a casing inspection log shall be done on the entire length of the innermost cemented casing in the well before doing any casing upgrade or repair. Authorization from the Office of Conservation shall be obtained before beginning any well recompletion, repair, upgrade, or closure. A salt cavern well that cannot be repaired or upgraded shall be properly closed according to §3141.

1. Liner. A liner may be used to recomplete or repair a well with severe casing damage. The liner shall be run from the well surface to the base of the innermost cemented casing. The liner shall be cemented over its entire length and shall be successfully pressure tested.

2. Casing Patch. Internal casing patches shall not be used to repair severely corroded or damaged casing. Casing patches shall only be used for repairing or covering isolated pitting, corrosion, or similar localized damage. The casing

patch shall extend a minimum of 10 feet above and below the area being repaired. The entire casing shall be successfully pressure tested.

E. Multiple Well Caverns. No newly permitted well shall be drilled into an existing salt cavern until the cavern pressure has been relieved, as practicable, to zero pounds per square inch as measured at the surface.

F. Cavern Allowable Operating Pressure.

1. The maximum allowable salt cavern injection pressure shall be calculated at a depth referenced to the shallower of either the salt cavern roof or the well's deepest cemented casing seat. When measured at the surface and calculated with respect to the appropriate reference depth, the maximum allowable salt cavern injection pressure shall never exceed a pressure gradient of 0.80 PSI per foot of vertical depth.

2. The salt cavern shall never be operated at pressures over the maximum allowable injection pressure defined above, exceed the maximum allowable pressure as may be established by permit, or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods, including pressure pulsation peaks, abnormal operating conditions, well or cavern tests.

3. The maximum injection pressure for a salt cavern shall be determined after considering the properties of all injected fluids, the physical properties of the salt stock, well and cavern design, neighboring activities within and above the salt stock, etc.

4. Shut-in pressure at the surface on the fluid withdrawal string or any annulus shall not be greater than 200 PSIG.

G. Cavern Displaced Fluid Management. The operator shall maintain a strict accounting of the fluid volume displaced from the salt cavern. Fluid displaced from a salt cavern shall be managed in a way that is protective of the environment. Such methods may include subsurface disposal via a properly permitted Class II disposal well, onsite storage for recycling as a waste carrier fluid, or any other method approved by the appropriate regulatory authority.

H. Waste Storage. Without exception or variance to these rules and regulations, all E&P wastes shall be stored in aboveground storage tanks. Storing wastes in open pits, cells, or similar earthen or open structures is strictly prohibited. Storage tanks shall be constructed of fiberglass, metal, or other similar material. All waste storage areas shall be built on concrete slabs/pads, be enclosed by retaining walls of required construction, and possess a means for the collection of spilled fluids.

I. Time Limits for Onsite Waste Storage. E&P waste accepted for disposal shall not be held in storage at the facility for more than 14 consecutive days. The Office of Conservation may grant a waiver to this requirement for extenuating circumstances only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:928 (June 2003).

### §3123. Safety

A. Emergency Action Plan. A plan outlining procedures for personnel at the facility to follow in case of an emergency shall be prepared and submitted as part of the

permit application. The plan shall contain emergency contact telephone numbers, procedures and specific information for facility personnel to respond to a release, upset, incident, accident, or other site emergency. A copy of the plan shall be kept at the facility and shall be reviewed and updated as needed.

B. Controlled Site Access. All operators of salt cavern waste disposal facilities shall install and maintain a chain link fence of at least six feet in height around the entire facility property. All points of entry into the facility shall be through by a lockable gate system. All gates of entry shall be locked except during hours of operation.

C. Facility Identification. An identification sign shall be placed at all gated entrances to the salt cavern waste disposal facility. All lettering on the sign shall be of at least one-inch dimensions and kept in a legible condition. The sign shall be of durable construction. Minimum information to include on the sign shall be the facility name, site address, daytime and nighttime telephone numbers, and shall be made applicable to the activity of the facility according to the following statement:

"This facility is authorized by the Office of Conservation, Injection and Mining Division to receive, store, treat, process, and/or dispose of E&P wastes into a salt cavern by means of subsurface injection. Improper operations, spills or violations at this facility should be reported to the Office of Conservation at (225) 342-5515."

D. Personnel. Trained and competent personnel shall be on duty and stationed as appropriate at the salt cavern waste disposal facility during all hours and phases of facility operation. Facility operation includes, but shall not be limited to, periods of waste acceptance, waste offloading, waste transfer, waste transport vehicle washing, waste storage, waste treatment, waste processing, and waste injection/disposal.

#### E. Wellhead Protection and Identification

1. A protective barrier shall be installed and maintained around wellheads, pipings, and above ground structures that may be vulnerable to physical or accidental damage by mobile equipment or trespassers.

2. An identifying sign shall be placed at the wellhead of each salt cavern well and shall include at a minimum the operators name, well/cavern name and number, well serial number, section-township-range, and any other information required by the Office of Conservation. The sign shall be of durable construction with all lettering kept in a legible condition.

#### F. Valves and Flowlines

1. All valves, flowlines, flanges, fittings, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. All components and related connections shall be maintained in good working order and shall be periodically inspected by the operator.

2. All valves, flowlines for waste injection, fluid withdrawal, and any other flowlines shall be designed to prevent pressures over maximum operating pressure from being exerted on the salt cavern well and salt cavern and prevent backflow or escape of injected waste material. The fluid withdrawal side of the wellhead shall have the same pressure rating as the waste injection side.

3. All flowlines for injection and withdrawal connected to the wellhead of the salt cavern well shall be equipped with remotely operated shut-off valves and shall also have manually operated positive shut-off valves at the wellhead. All remotely operated shut-off valves shall be fail-safe and tested and inspected according to §3123.L.

G. Alarm Systems. Manual and automatically activated alarms shall be installed at all salt cavern waste disposal facilities. All alarms shall be audible and visible from any normal work location within the facility. The alarms shall always be maintained in proper working order. Automatic alarms designed to activate an audible and a visible signal shall be integrated with all pressure, flow, heat, fire, cavern overflow, leak sensors and detectors, emergency shutdown systems, or any other safety system. The circuitry shall be designed such that failure of a detector or sensor shall activate a warning.

H. Emergency Shutdown Valves. Manual and automatically actuated emergency shutdown valves shall be installed on all systems of salt cavern injection and withdrawal and any other flowline going into or out from each salt cavern wellhead. All emergency shutdown valves shall be fail-safe and shall be tested and inspected according to §3123.L.

1. Manual controls for emergency shutdown valves shall be designed for operation from a local control room, at the salt cavern well, any remote monitoring and control location, and at a location that is likely to be accessible to emergency response personnel.

2. Automatic emergency shutdown valves shall be designed to actuate on detection of abnormal pressuring of the waste injection system, abnormal increases in flow rates, responses to any heat, fire, cavern overflow, leak sensors and detectors, loss of pressure or power to the salt cavern well, salt cavern, or valves, or any abnormal operating condition.

I. Vapor Monitoring and Leak Detection. The operator shall develop a vapor monitoring and leak detection plan as required in §3125.C below to detect the presence of noxious vapors, combustible gases, or any potentially ignitable substances.

J. Gaseous Vapor Control. Where necessary, the operator shall install and maintain in good working order a system for managing the uncontrolled escape of noxious vapors, combustible gases, or any potentially ignitable substances within the salt cavern waste disposal facility. Any vapor control system shall be in use continuously during facility operation.

K. Fire Detection/Suppression. All salt cavern waste disposal facilities shall have a system or method of fire detection and fire control or suppression. Emphasis for fire detection shall be at waste transfer, waste storage, waste process areas, and any area where combustible materials or vapors might exist. The fire detection system shall be integrated into the automatic alarm and emergency shutdown systems of the facility.

#### L. Systems Test and Inspection

1. Safety Systems Test. The operator shall function-test all critical systems of control and safety at least once every six months. This includes testing of alarms, test tripping of emergency shutdown valves ensuring their closure times are within design specifications, and ensuring the integrity of all electrical, pneumatic, and/or hydraulic

circuits. Tests results shall be documented and keep onsite for inspection by an agent of the Office of Conservation.

2. Visual Facility Inspections. Visual inspections of the entire salt cavern waste disposal facility shall be conducted each day the facility is operating. At a minimum, this shall include inspections of the wellhead, flowlines, valves, waste transfer areas, waste storage areas, waste processing areas, signs, perimeter fencing, and all other areas of the facility. Problems discovered during the inspections shall be corrected timely.

M. Retaining Walls and Spill Containment

1. Retaining walls, curbs, or other spill containment systems shall be designed, built, and maintained around appropriate areas of the facility to collect, retain, and/or otherwise prevent the escape of wastes or other materials that may be released through facility upset or accidental spillage. Retaining walls shall be constructed of reinforced concrete. All retaining walls shall be built to a level that will provide sufficient capacity for holding at least 110 percent of the volume of each tank. All storage areas shall be kept free of debris, trash, or other materials that may constitute a fire hazard.

2. At a minimum, the following areas shall be protected by retaining walls and/or spill containment:

- a. waste acceptance areas;
- b. waste unloading and waste transfer areas;
- c. waste storage areas;
- d. waste transport vehicle and transport container decontamination/washout areas;
- e. waste treatment and waste processing areas;
- f. curbed area around the wellhead of each salt cavern well; and
- g. any other areas of the facility the Office of Conservation deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:929 (June 2003).

**§3125. Monitoring Requirements**

A. Pressure Gauges, Pressure Sensors, Flow Sensors

1. Pressure gauges that show pressure on the fluid injection string, fluid withdrawal string, and any annulus of the well, including the blanket material annulus, shall be installed at each wellhead. Gauges shall be designed to read in 10 PSI increments. All gauges shall be properly calibrated and shall always be maintained in good working order. The pressure valves onto which the pressure gauges are affixed shall have one-half inch female fittings.

2. Pressure sensors designed to automatically close all emergency shutdown valves in response to a preset pressure (high/low) shall be installed and properly maintained for all fluid injection and fluid withdrawal strings, and blanket material annulus.

3. Flow sensors designed to automatically close all emergency shutdown valves in response to abnormal increases in cavern injection and withdrawal flow rates shall be installed and properly maintained on each salt cavern well.

B. Continuous Recording Instruments. Continuous recording instrumentation shall be installed and properly maintained for each salt cavern well. Continuous recordings

may consist of circular charts, digital recordings, or similar type. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure or any other parameter being monitored. The chart shall be scaled such that the parameter being recorded is 30 percent to 70 percent of full scale. Instruments shall be housed in weatherproof enclosures when located in areas exposed to climatic conditions. All fluid volumes shall be determined by metering or an alternate method approved by the Office of Conservation. Minimum data recorded shall include the following:

- 1. wellhead pressures on both the fluid injection and fluid withdrawal strings;
- 2. wellhead pressure on the blanket material annulus;
- 3. volume and flow rate of waste injected;
- 4. volume of fluid withdrawn;
- 5. salinity of injected material including the carrier fluid; and
- 6. density of injected material.

C. Vapor Monitoring and Leak Detection

1. Without exception or variance to these rules and regulations, the operator shall develop a monitoring plan designed to detect the presence of a buildup of noxious vapors, combustible gases, or any potentially ignitable substances in the atmosphere resulting from the storage, treatment, processing, and disposal of waste at the facility. Variations in topography, atmospheric conditions typical to the area, characteristics of the wastes, nearness of the facility to homes, schools, commercial establishments, etc. shall be considered in developing the monitoring plan. The plan shall be submitted as part of the permit application and should include provisions for the strategic placement of detection devices at various areas of the facility such as:

- a. waste transfer, waste storage, and waste process areas;
- b. salt cavern wellhead(s). An exception may be allowed for salt cavern wells in close proximity to each other, thus, the monitoring plan may include installation of detection devices around the perimeter of the well field; and
- c. any other areas of the facility where may be appropriate.

2. All detection devices or systems identified in the monitoring plan shall include their integration into the facility's automatic alarm system. Activation of a detection device or system alarm shall cause a cessation of all waste acceptance, waste transfer, waste processing, and waste injection until the reason for the alarm activation has been determined and corrected.

D. Subsidence Monitoring. The owner or operator shall prepare and carry out a plan to monitor ground subsidence at and in the vicinity of the waste disposal cavern(s). Frequency of subsidence monitoring shall be scheduled to occur annually during the same period. A monitoring report shall be prepared and submitted to the Office of Conservation after completion of each monitoring event.

E. Wind Sock. At least one wind sock shall be installed at all salt cavern waste disposal facilities. The wind sock shall be visible from any normal work location within the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:931 (June 2003).

**§3127. Pre-Operating Requirements C Completion Report**

A. The operator of a salt cavern waste disposal facility shall not accept, store, treat, process, or otherwise initiate waste disposal operations until all required information has been submitted to the Office of Conservation and the operator has received written authorization from the Office of Conservation clearly stating waste disposal operations may begin.

B. The operator shall submit a report to the Office of Conservation that describes, in detail, the work performed resulting from any approved permitted activity. A report shall include all information relating to the work and information that documents compliance with these rules and the approved permitted activity. The report shall be prepared and submitted for any approved work relating to the construction, installation and completion of the surface portion of the facility and information on the construction, conversion, or workover of the salt cavern well or salt cavern.

C. Where applicable to the approved permitted activity, information in a completion report shall include:

1. all required state reporting forms containing original signatures;
2. revisions to any operation or construction plans since approval of the permit application;
3. as-built schematics of the layout of the surface portion of the facility;
4. as-built piping and instrumentation diagram(s);
5. copies of applicable records associated with drilling, completing, working over, or converting the salt cavern well and/or salt cavern including a daily chronology of such activities;
6. revised certified location plat of the salt cavern well if the actual location of the well differs from the location plat submitted with the salt cavern well application;
7. as-built subsurface diagram of the salt cavern well and salt cavern labeled with appropriate construction, completion, or conversion information, i.e., depth and diameter of all tubulars, depths of top of cap rock and salt, and top and bottom of the cavern;
8. as-built diagram of the surface wellhead labeled with appropriate construction, completion, or conversion information, i.e., valves, gauges, and flowlines;
9. results of any core sampling and testing;
10. results of well or cavern tests such as casing and casing seat tests, well/cavern mechanical integrity pressure and leak tests;
11. copies of any wireline logging such as open hole and/or cased hole logs, cavern sonar survey;
12. any additional data documenting the work performed for the permitted activity, information requested by the Office of Conservation, or any additional reporting requirements imposed by the approved permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:932 (June 2003).

**§3129. Well and Salt Cavern Mechanical Integrity Pressure and Leak Tests**

A. The operator of the salt cavern well and cavern shall have the burden of meeting the requirements for well and cavern mechanical integrity. The Office of Conservation shall be notified in writing at least seven days before any scheduled mechanical integrity test. The test may be witnessed by Office of Conservation personnel but must be witnessed by a qualified third party.

B. Frequency of Tests. Without exception or variance to these rules and regulations, all salt cavern wells and salt caverns shall be tested for and satisfactorily prove mechanical integrity before being placed into initial waste disposal service. After the initial test for well and cavern mechanical integrity, all subsequent tests shall occur at least once every five years. Additionally, mechanical integrity testing shall be done for the following reasons regardless of test frequency:

1. after any alteration to any cemented casing or cemented liner;
2. after performing any remedial work to reestablish well or cavern integrity;
3. before suspending salt cavern waste disposal operations for reasons other than a lack of well/cavern mechanical integrity if it has been more than three years since the last mechanical integrity test;
4. before well/cavern closure; or
5. whenever the Office of Conservation believes a test is warranted.

C. Test Method

1. All mechanical integrity pressure and leak tests shall demonstrate no significant leak in the salt cavern, wellbore, casing seat, and wellhead. Test schedules and methods shall consider neighboring activities occurring at the salt dome to reduce any influences those neighboring activities may have on the salt cavern being tested.

2. Tests shall be conducted using the nitrogen-brine interface method with density interface and temperature logging. An alternative test method may be used if the alternative test can reliably demonstrate well/cavern mechanical integrity and with prior written approval from the Office of Conservation.

3. The salt cavern pressure shall be stabilized before beginning the test. Stabilization shall be reached when the rate of cavern pressure change is no more than 10 PSIG during 24 hours.

4. The stabilized test pressure applied at the surface shall be a minimum of 125 percent of the maximum cavern surface operating pressure or 500 PSIG whichever is greater. However, at no time shall the test pressure calculated with respect to the shallowest occurrence of either the cavern roof or deepest cemented casing seat and as measured at the surface exceed a pressure gradient of 0.80 PSI per foot of vertical depth. The salt cavern well or salt cavern shall never be subjected to pressures over the maximum allowable operating pressure or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods during testing.

5. A mechanical integrity pressure and leak test shall be run for at least 24 hours after cavern pressure stabilization and must be of sufficient time duration to ensure a sensitive

test. All pressures shall be monitored and recorded continuously throughout the test. Continuous pressure recordings may be achieved through mechanical charts or may be recorded digitally. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be scaled such that the test pressure is 30 percent to 70 percent of full scale. All charts shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure, temperature, or any other monitored parameter.

D. Submission of Pressure and Leak Test Results. One complete copy of the mechanical integrity pressure and leak test results shall be submitted to the Office of Conservation within 30 days of test completion. The report shall include the following minimum information:

1. current well and cavern completion data;
2. description of the test procedure including pretest preparation;
3. copies of all wireline logs performed during testing;
4. tabulation of measurements for pressure, volume, temperature, etc.;
5. interpreted test results showing all calculations including error analysis and calculated leak rates; and
6. any information the owner or operator of the salt cavern determines is relevant to explain the test procedure or results.

E. Mechanical Integrity Test Failure

1. Without exception or variance to these rules and regulations, a salt cavern well or salt cavern that fails a test for mechanical integrity shall be immediately taken out of waste disposal service. The failure shall be reported to the Office of Conservation according to the Notification Requirements of §3109.H. The owner or operator shall investigate the reason for the failure and shall take appropriate steps to return the salt cavern well or salt cavern to a full state of mechanical integrity. A salt cavern well or salt cavern is considered to have failed a test for mechanical integrity for the following reasons:

- a. failure to maintain a change in test pressure of no more than 10 PSIG over a 24-hour period;
- b. not maintaining nitrogen-brine interface levels according to standards applied in the salt cavern storage industry; or
- c. fluids are determined to have escaped from the salt cavern well or salt cavern during waste disposal operations.

2. Written procedures for rehabilitation of the salt cavern well or salt cavern, extended salt cavern monitoring, or abandonment (closure and post-closure) of the salt cavern well or salt cavern shall be submitted to the Office of Conservation within 30 days of mechanical integrity test failure.

3. Upon reestablishment of mechanical integrity of the salt cavern well or salt cavern and before returning either to waste disposal service, a new mechanical integrity pressure and leak test shall be performed that demonstrates mechanical integrity of the salt cavern well or salt cavern. The owner or operator shall submit the new test results to the Office of Conservation for written approval before resuming waste disposal operations.

4. If a salt cavern well or salt cavern fails to demonstrate mechanical integrity and where mechanical integrity cannot be reestablished, the Office of Conservation

may require the owner or operator to begin closure of the well or cavern within six months according to an approved closure and post-closure plan.

5. If a salt cavern fails mechanical integrity and where rehabilitation cannot be accomplished within six months, the Office of Conservation may waive the six-month closure requirement if the owner or operator is engaged in a salt cavern remediation study and implements an interim salt cavern monitoring plan. The owner or operator must seek written approval from the Office of Conservation before implementing a salt cavern monitoring program. The basis for the Office of Conservation's approval shall be that any waiver granted shall not endanger the environment, or the health, safety and welfare of the public. The Office of Conservation may establish a time schedule for salt cavern rehabilitation, cessation of interim salt cavern monitoring, and eventual salt cavern closure and post-closure activities.

F. Prohibition of Waste Acceptance During Mechanical Integrity Failure

1. Salt cavern waste disposal facilities with a single cavern are prohibited from accepting E&P wastes at the facility until mechanical integrity of the salt cavern well or salt cavern is documented to the satisfaction of the Office of Conservation.

2. Salt cavern waste disposal facilities with multiple salt caverns may continue accepting E&P wastes if the other cavern(s) at the facility exhibit mechanical integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:932 (June 2003).

**§3131. Cavern Configuration and Capacity Measurements**

A. Sonar caliper surveys shall be performed on all salt caverns. With prior approval of the Office of Conservation, the operator may use another similar proven technology designed to determine cavern configuration and measure cavern capacity as a substitute for a sonar survey.

B. Frequency of Surveys. A sonar caliper survey shall be performed and submitted as part of the salt cavern waste disposal permit application. All subsequent surveys shall occur at least once every five years. Additional surveys shall be done for any of the following reasons regardless of frequency:

1. before commencing salt cavern closure operations;
2. whenever leakage into or out of the salt cavern is suspected;
3. after performing any remedial work to reestablish salt cavern well or salt cavern integrity; or
4. whenever the Office of Conservation believes a survey is warranted.

C. Submission of Survey Results. One complete copy of each survey shall be submitted to the Office of Conservation within 30 days of survey completion.

1. Survey readings shall be taken a minimum of every 10 feet of vertical depth. Sonar reports shall contain the following minimum information and presentations:

- a. tabulation of incremental and total salt cavern volume for every survey reading;
- b. tabulation of the salt cavern radii at various azimuths for every survey reading;

- c. tabulation of the maximum salt cavern radii at various azimuths;
- d. graphical plot of Cavern Depth versus Volume;
- e. graphical plot of the maximum salt cavern radii;
- f. vertical cross sections of the salt cavern at various azimuths drawn to an appropriate horizontal and vertical scale;
- g. vertical cross section overlays comparing results of current survey and previous surveys;
- h. (optional)-isometric or 3-D shade profile of the salt cavern at various azimuths and rotations.

2. The information submitted resulting from use of an approved alternative survey method to determine cavern configuration and measure cavern capacity shall be determined based on the method or type of survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:933 (June 2003).

**§3133. Cavern Capacity Limits**

A. The waste volume permitted for disposal into a salt cavern may not exceed 90 percent of the salt cavern volume measured from the sonar caliper survey submitted as part of the permit application. Upon reaching the permitted waste volume, the owner or operator shall remove the salt cavern from further waste disposal service and within seven days notify the Office of Conservation of such. Due to the potential for salt cavern enlargement resulting from disposal of undersaturated fluids, the operator may request a modification to the permit to allow for a continued waste disposal based on the findings of a new cavern capacity survey. If the Office of Conservation denies the request for permit modification, the operator shall begin preparations for salt cavern closure per approved updated closure and post-closure plan. The operator shall maintain a strict accounting of the waste volume disposed into the salt cavern, the fluid volume displaced from the salt cavern, and the salt cavern volume.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:934 (June 2003).

**§3135. Inactive Caverns**

A. The operator shall comply with the following minimum requirements when there has been no disposal of waste into a salt cavern for 30 consecutive days or more, regardless of the reason:

- 1. notify the Office of Conservation as per the requirements of §3109.H.3;
- 2. disconnect all flowlines for injection to the salt cavern well;
- 3. maintain continuous monitoring of salt cavern pressure, fluid withdrawal, and other parameters required by the permit;
- 4. maintain and demonstrate salt cavern well and salt cavern mechanical integrity if disposal operations were suspended for reasons other than a lack of mechanical integrity;
- 5. maintain compliance with financial responsibility requirements of these rules and regulations;

6. any additional requirements of the Office of Conservation to document the salt cavern well and salt cavern shall not endanger the environment, or the health, safety and welfare of the public during the period of salt cavern inactivity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:934 (June 2003).

**§3137. Monthly Operating Reports**

A. The operator shall submit monthly waste receipts and operation reports to the Office of Conservation. Monthly reports are due no later than 15 days following the end of the reporting month.

B. The operator shall have the option of submitting monthly reports by any of the following methods:

- 1. the appropriate Office of Conservation supplied form;
- 2. an operator generated form of the same format and containing the same data fields as the Office of Conservation's form; or
- 3. electronically in a format meeting the Office of Conservation's requirements for electronic data submission.

C. Monthly reports shall contain the following minimum information:

- 1. name and location of the salt cavern waste disposal facility;
- 2. source and type of waste disposed;
- 3. wellhead pressures (PSIG) on all injection and withdrawal hanging strings;
- 4. wellhead pressure (PSIG) on the blanket material annulus;
- 5. density in pounds per gallon (PPG) of injected material;
- 6. volume in barrels (BBLs) and flow rate in barrels per minute (BPM) of injected material;
- 7. volume (BBLs) and disposition of all fluids withdrawn or displaced from the salt cavern;
- 8. chloride concentration in milligrams per liter (Mg/L) of injected materials including the carrier fluid;
- 9. changes in the blanket material fluid volume;
- 10. results of any monitoring program required by permit or compliance action;
- 11. summary of any test of the salt cavern well or salt cavern;
- 12. summary of any workover performed during the month including minor well maintenance;
- 13. description of any event which triggers an alarm or shutdown device and the response taken;
- 14. description of any event that exceeds operating parameters for annulus pressure or injection pressure as may be specified in the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:934 (June 2003).

**§3139. Record Retention**

A. The owner or operator shall retain copies of all records, data, and information concerning the design, permitting, construction, and operation of the salt cavern well, salt cavern, and related surface facility. Records shall

be retained throughout the operating life of the salt cavern waste disposal facility and for five years following conclusion of any post-closure care requirements. Records, data, and information shall include, but shall not be limited to the permit application, cementing (primary and remedial), wireline logs, drill records, casing records, casing pressure tests, well recompletion records, well/cavern mechanical integrity tests, cavern capacity and configuration surveys, surface construction, sources of wastes disposed, waste manifests, waste testing results, post-closure activities, corrective action, etc. All documents relating to any waste accepted and rejected for disposal shall be kept at the facility and shall be available for inspection by agents of the Office of Conservation at any time.

B. Should there be a change in the owner or operator of the salt cavern waste disposal facility, copies of all records identified in the previous paragraph shall be transferred to the new owner or operator. The new owner or operator shall then have the responsibility of maintaining such records.

C. The Office of Conservation may require the owner or operator to deliver the records to the Office of Conservation at the conclusion of the retention period. If so, the records shall be retained at a location designated by the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:934 (June 2003).

#### **§3141. Closure and Post-Closure**

A. Closure. The owner or operator shall close the salt cavern well, salt cavern, surface facility or parts thereof as approved by the Office of Conservation. Closure shall not begin without written authorization from the Office of Conservation.

1. Closure Plan. Plans for closure of the salt cavern well, salt cavern, and related surface facility shall be submitted as part of the permit application. The closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the closure plan survives the termination of a permit or the cessation of salt cavern waste disposal operations or related activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a closure plan where necessary.

2. Closure Plan Requirements. The owner or operator shall review the closure plan annually to determine if the conditions for closure are still applicable to the actual conditions of the salt cavern well, salt cavern, or surface facility. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a closure plan shall address the following:

a. assurance of financial responsibility as required in §3109.B.1. All instruments of financial responsibility shall be reviewed each year before its renewal date according to the following process:

i. a detailed cost estimate for adequate closure of the entire salt cavern waste disposal facility (salt cavern well, salt cavern, surface appurtenances, etc.) shall be prepared by a qualified, independent third party and

submitted to the Office of Conservation by the date specified in the permit;

ii. the closure plan and cost estimate shall include provisions for closure acceptable to the Office of Conservation and shall reflect the costs for the Office of Conservation to complete the approved closure of the facility;

iii. after reviewing the closure cost estimate, the Office of Conservation may increase, decrease or allow the amount to remain the same;

iv. documentation from the operator showing that the required financial instrument has been renewed shall be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of funds guaranteed by the financial instrument and suspend or revoke the operating permit. Permit suspensions shall remain in effect until renewal documentation is received and accepted by the Office of Conservation;

b. a prediction of the pressure build-up in the salt cavern following closure;

c. an analysis of potential pathways for leakage from the salt cavern, cemented casing shoe, and wellbore. Consideration shall be given to site specific elements of geology, waste characteristics, salt cavern geometry and depth, salt cavern pressure build-up over time due to salt creep and other factors inherent to the salt stock and/or salt dome;

d. procedures for determining the mechanical integrity of the salt cavern well and salt cavern before closure;

e. removal and proper disposal of any waste or other materials remaining at the facility;

f. closing, dismantling, and removing all equipment and structures located at the surface (including site restoration) if such equipment and structures will not be used for another purpose at the same disposal facility;

g. the type, number, and placement of each wellbore or salt cavern plug including the elevation of the top and bottom of each plug and the method of placement of the plugs;

h. the type, grade, and quantity of material to be used in plugging;

i. a description of the amount, size, and location (by depth) of casing and any other well construction materials to be left in the salt cavern well;

j. any proposed test or measurement to be made before or during closure.

#### **3. Notice of Intent to Close**

a. The operator shall review the closure plan before seeking authorization to begin closure activities to determine if the conditions for closure are still relevant to the actual conditions of the salt cavern well, salt cavern, or surface facility. Revisions to the method of closure reflected in the plan shall be submitted to the Office of Conservation for approval no later than the date on which the notice of closure is required to be submitted as shown in the subparagraph below.

b. The operator shall notify the Office of Conservation in writing at least 30 days before the expected closure of a salt cavern well, salt cavern, or surface facility.



Notification shall be by submission of a request for a work permit. At the discretion of the Office of Conservation, a shorter notice period may be allowed.

4. Standards for Closure. The following are minimum standards for closing the salt cavern well or salt cavern. The Office of Conservation may require additional standards prior to actual closure.

a. After permanently concluding waste disposal operations into the salt cavern but before closing the salt cavern well or salt cavern, the owner or operator shall:

i. observe and accurately record the shut-in salt cavern pressures and salt cavern fluid volume for an appropriate time or a time specified by the Office of Conservation to provide information regarding the salt cavern's natural closure characteristics and any resulting pressure buildup;

ii. using actual pre-closure monitoring data, show and provide predictions that closing the salt cavern well or salt cavern as described in the closure plan will not result in any pressure buildup within the salt cavern that could adversely effect the integrity of the salt cavern well, salt cavern, or any seal of the system.

b. Before closure, the owner or operator shall do mechanical integrity pressure and leak tests to ensure the integrity of both the salt cavern well and salt cavern.

c. Before closure, the owner or operator shall remove and properly dispose of any free oil or blanket material remaining in the salt cavern well or salt cavern.

d. Upon permanent closure, the owner or operator shall plug the salt cavern well with cement in a way that will not allow the movement of fluids into or between underground sources of drinking water or outside the salt stock. Placement of cement plugs shall be accomplished by using standard petroleum industry practices for downhole well abandonment. Each plug shall be appropriately tagged and pressure tested for seal and stability before closure is completed.

e. Upon successful completion of the closure, the owner or operator shall identify the surface location of the abandoned well with a permanent marker inscribed with the operator's name, well name and number, serial number, section-township-range, date plugged and abandoned, and acknowledgment that the well and salt cavern were used for disposal of E&P waste.

5. Closure Report. The owner or operator shall submit a closure report to the Office of Conservation within 30 days after closure of the salt cavern well, salt cavern, surface facility, or part thereof. The report shall be certified as accurate by the owner or operator and by the person charged with overseeing the closure operation (if other than the owner or operator). The report shall contain the following information:

a. detailed procedures of the closure operation. Where actual closure differed from the plan previously approved, the report shall include a written statement specifying the differences between the previous plan and the actual closure;

b. all state regulatory reporting forms relating to the closure activity; and

c. any information pertinent to the closure activity including test or monitoring data.

B. Post-Closure. Plans for post-closure care of the salt cavern well, salt cavern, and related surface facility shall be submitted as part of the permit application. The post-closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of salt cavern waste disposal operations or related activities. The requirement to maintain and implement an approved post-closure plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a post-closure plan where necessary.

1. The owner or operator shall review the post-closure plan annually to determine if the conditions for post-closure are still applicable to actual conditions. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a post-closure plan shall address the following:

a. assurance of financial responsibility as required in §3109.B.1. All instruments of financial responsibility shall be reviewed each year before its renewal date according to the following process:

i. a detailed cost estimate for adequate post-closure care of the entire salt cavern waste disposal facility shall be prepared by a qualified, independent third party and submitted to the Office of Conservation by the date specified in the permit;

ii. the post-closure care plan and cost estimate shall include provisions acceptable to the Office of Conservation and shall reflect the costs for the Office of Conservation to complete the approved post-closure care of the facility;

iii. after reviewing the post-closure cost estimate, the Office of Conservation may increase, decrease or allow the amount to remain the same;

iv. documentation from the operator showing that the required financial instrument has been renewed must be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of the funds guaranteed by the financial instrument and suspend or revoke the operating permit. Any permit suspension shall remain in effect until renewal documentation is received and accepted by the Office of Conservation;

b. any plans for monitoring, corrective action, site remediation, site restoration, etc., as may be necessary.

2. Where necessary and as an ongoing part of post-closure care, the owner or operator shall continue the following activities:

a. complete any corrective action or site remediation resulting from the operation of a salt cavern waste disposal facility;

b. conduct any groundwater monitoring or subsidence monitoring required by the permit until pressure in the salt cavern displays a trend of behavior that can be shown to pose no threat to salt cavern integrity, underground sources of drinking water, or other natural resources of the state;

c. complete any site restoration.

3. The owner or operator shall retain all records as required in §3139 for five years following conclusion of post-closure requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:935 (June 2003).

**Part XIX. Office of Conservation  
Subpart 1. Statewide Order No. 29-B**

**Chapter 5. Off-site Storage, Treatment and/or Disposal of Exploration and Production Waste Generated from Drilling and Production of Oil and Gas Wells**

NOTE: Onsite disposal requirements are listed in LAC 43:XIX, Chapter 3.

**§501. Definitions**

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*Exploration and Production Waste (E&P Waste)* Drilling wastes, salt water, and other wastes associated with the exploration, development, or production of crude oil or natural gas wells and which is not regulated by the provisions of, and, therefore, exempt from the Louisiana Hazardous Waste Regulations and the Federal Resource Conservation and Recovery Act, as amended. E&P Wastes include, but are not limited to the following.

Waste Type	E&P Waste Description
01	Salt water (produced brine or produced water), except for salt water whose intended and actual use is in drilling, workover or completion fluids or in enhanced mineral recovery operations, process fluids generated by approved salvage oil operators who only receive oil (BS&W) from oil and gas leases, and nonhazardous natural gas plant processing waste fluid which is or may be commingled with produced formation water.
02	Oil-base drilling wastes (mud, fluids and cuttings)
03	Water-base drilling wastes (mud, fluids and cuttings)
04	Completion, workover and stimulation fluids
05	Production pit sludges
06	Storage tank sludge from production operations, onsite and commercial saltwater disposal facilities, DNR permitted salvage oil facilities (that only receive waste oil [B, S, & W] from oil and gas leases), and sludges generated by service company and commercial facility or transfer station wash water systems
07	Produced oily sands and solids
08	Produced formation fresh water
09	Rainwater from firewalls, ring levees and pits at drilling and production facilities
10	Washout water and residual solids generated from the cleaning of containers that transport E&P Waste and are not contaminated by hazardous waste or material; washout water and solids (E&P Waste Type 10) is or may be generated at a commercial facility or transfer station by the cleaning of a container holding a residual amount (no more than 1 barrel) of E&P Waste
11	Washout pit water and residual solids from oilfield related carriers and service companies that are not permitted to haul hazardous waste or material
12	Nonhazardous Natural gas plant processing waste solids.
13	(Reserved)
14	Pipeline test water which does not meet discharge limitations established by the appropriate state agency, or pipeline pigging waste, i.e., waste fluids/solids generated from the cleaning of a pipeline
15	E&P Wastes that are transported from permitted commercial facilities and transfer stations to permitted commercial treatment and disposal facilities, except those E&P Wastes defined as Waste Types 01 and 06

16	Crude oil spill clean-up waste
50	Salvageable hydrocarbons bound for permitted salvage oil operators
99	Other E&P Waste not described above (shipment to a commercial facility or transfer station must be pre-approved prior to transport)

\*\*\*

*Salt Cavern Waste Disposal Facility* Any public, private, or commercial property, including surface and subsurface lands and appurtenances thereto, used for receiving, storing, and/or processing oil and gas exploration and production waste for disposal into a solution-mined salt cavern.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000), amended LR 27:1898 (November 2001), LR 29:937 (June 2003).

**§503. General Requirement for Generators**

A. - F.2. ...

3. Prior to shipment and disposal at commercial land treatment facilities, natural gas plant processing waste solids (gas plant waste - Waste Type 12) must be analyzed for the chemical compound benzene (C<sub>6</sub>H<sub>6</sub>). Testing must be performed by a DEQ certified laboratory in accordance with procedures presented in the *Laboratory Manual for the Analysis of E&P Waste* (Department of Natural Resources, August 9, 1988, or latest revision).

F.4. - H.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), amended LR 27:1900 (November 2001), LR 29:937 (June 2003).

**§505. General Requirements for Commercial Facilities and Transfer Stations**

A. ...

B. Commercial land treatment facilities may not receive, store, treat or dispose of natural gas plant processing waste solids (Waste Type 12) that exceed the MPC criteria of §549.C.7.a for total benzene (3198 mg/kg) unless the company has demonstrated to the commissioner that Waste Type 12 can be pretreated to below the applicable MPC prior to land treatment. Such demonstration shall be considered a major modification of any existing permit and will require compliance with the permitting procedures of §§519, 527, and 529, including the submission of an application and public participation. The E&P waste management and operations plan required in §515 shall clearly indicate how the E&P Waste storage and treatment system will minimize the release of benzene (e.g., enclosed tanks, enclosed treatment equipment, vapor recovery systems, etc.). Such demonstration shall also include proof of solicitation from DEQ regarding applicable required air permitting for the existing and amended land treatment system.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), amended LR 27:1900 (November 2001), LR 29:937 (June 2003).

**§507. Location Criteria**

A. Commercial facilities and transfer stations may not be located in any area:

1. within one-quarter mile of a public water supply water well or within 1,000 feet of a private water supply well for facilities permitted after January 1, 2002;

2. - 5. ...

6. where such area, or any portion thereof, has been designated as wetlands by the U.S. Corps of Engineers during, or prior to, initial facility application review, unless the applicable wetland and DNR Coastal Management Division coastal use permits are obtained;

A.7 - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2817 (December 2000), amended LR 27:1902 (November 2001), LR 29:938 (June 2003).

**§511. Financial Responsibility**

A. - E.1. ...

2. The insurer further certifies the following with respect to the insurance described in LAC 43:XIX.511.E.1.

E.2. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), amended LR 27:1903 (November 2001), LR 29:938 (June 2003).

**§519. Permit Application Requirements for Commercial Facilities**

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

d. all public supply water wells and private water supply wells within one mile of the proposed facility;

5. - 6.d. ...

7. documentation of compliance with the applicable location criteria of §507.A.5 and 6, with regard to flood zones and wetland areas;

8. - 21. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), amended LR 27:1905 (November 2001), LR 29:938 (June 2003).

**§523. Permit Application Requirements for Land Treatment Systems**

A. - C.5. ...

D. An explanation of the proposed E&P Waste management and operations plan with reference to the following topics:

D.1. - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2816 (December 2000), amended LR 27:1906 (November 2001), LR 29:938 (June 2003).

**§525. Permit Application Requirements for Other Treatment and Disposal Options**

A. - C.5. ...

D. An explanation of the proposed E&P Waste management and operations plan with reference to the following topics:

D.1. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1907 (November 2001), amended LR 29:938 (June 2003).

**§535. Notification Requirements**

A. - F. ...

G. The operator of a commercial salt cavern E&P waste storage well and facility shall provide a corrective action plan to address any unauthorized escape, discharge or release of any material, fluids, or E&P waste from the well or facility, or part thereof. The plan shall address the cause, delineate the extent, and determine the overall effects on the environment resulting from the escape, discharge or release. The Office of Conservation shall require the operator to formulate a plan to remediate the escaped, discharged or released material, fluids or E&P waste if the material, fluids, or E&P waste is thought to have entered or has the possibility of entering an underground source of drinking water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1909 (November 2001), LR 29:938 (June 2003).

**§547. Commercial Exploration and Production Waste Treatment and Disposal Options**

A. - A.5. ...

6. Cavern Disposal. The utilization of a solution-mined salt cavern for the disposal of E&P waste fluids and solids. Applicants for permits and operators of commercial E&P waste salt cavern disposal wells must comply with the requirements of this Chapter (LAC 43:XIX.501 et seq.) and the applicable requirements of Statewide Order No. 29-M-2, LAC 43:XVII, 3101 et seq. (see §555).

A.7. - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1910 (November 2001), LR 29:938 (June 2003).

**§555. Requirements for Cavern Disposal**

A. Applicants for new commercial solution-mined salt cavern facilities to receive and dispose of E&P waste and operators of such existing facilities must comply with the administrative and technical criteria of LAC 43:XIX, Subpart 1, Chapter 5 (§501 et seq.) as well as the applicable definitions, administrative criteria and technical criteria of LAC 43:XVII, Subpart 4, Chapter 31 (§3101 et seq., Disposal of Exploration and Production Waste in Solution-Mined Salt Caverns).

B. The application for a new commercial salt cavern for the disposal of E&P waste shall include, but may not limited to the following information:

1. The general provisions of LAC 43:XVII.3103;

2. An application shall contain the information required in LAC 43:XVII.3107, as follows:

a. §3107.BCAdministrative Information;

- b. §3107.CCMaps and Related Information;
  - c. §3107.DCArea of Review;
  - d. §3107.ECTechnical Information.
3. The legal permit conditions required in LAC 43:XVII, 3109, as follows:
- a. §3109.ACSignatories;
  - b. §3109.CCDuty to Comply;
  - c. §3109.DCDuty to Halt or Reduce Activity;
  - d. §3109.ECDuty to Mitigate;
  - e. §3109.FC Proper Operation and Maintenance;
  - f. §3109.GC Inspection and Entry;
  - g. §3109.H. 3, 4, 7b, 8, 9 and 10CNotification Requirements;
  - h. §3109.ICDuration of Permits;
  - i. §3109.JCCompliance Review;
  - j. §3109.KCAdditional Conditions.
4. The location criteria of Statewide Order No. 29-M-2, LAC 43:XVII.3113.
5. The site assessment requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3115.
6. The cavern and surface facility design requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3117.
7. The well construction and completion requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3119.
8. The operating requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3121.
9. The safety requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3123.
10. The monitoring requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3125.
11. The pre-operating and completion report requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3127.
12. The well and salt cavern mechanical integrity pressure and leak test requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3129.
13. The requirements for determining cavern configuration and measuring cavern capacity in Statewide Order No. 29-M-2, LAC 43:XVII.3131.
15. The limits on cavern capacity in Statewide Order No. 29-M-2, LAC 43:XVII.3133.
16. The requirements for inactive caverns in Statewide Order No. 29-M-2, LAC 43:XVII.3135.
17. The monthly reporting requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3137.
18. The record retention requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3139.
19. The applicable closure and post-closure requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3141.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:938 (June 2003).

**§565. Resource Conservation and Recovery of Exploration and Production Waste**

A. - E.4.b. ...

**F. Testing Criteria for Reusable Material**

\* E&P Waste when chemically treated (fixated) shall, in addition to the criteria set forth be acceptable as reusable material with a pH range of 6.5 to 12 and an electrical conductivity of up to 50 mmhos/cm, provided such reusable

material passes leachate testing requirements for chlorides in §565.F above and leachate tests for metals in §565.F above.

\*\* The leachate testing method for TPH, chlorides and metals is included in the *Laboratory Manual for the Analysis of E&P Waste* (Department of Natural Resources, August 9, 1988, or latest revision).

G. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1916 (November 2001), LR 29:939 (June 2003).

James H. Welsh  
Commissioner

0306#013

**RULE**

**Department of Natural Resources  
Office of Conservation**

**Surface Mining**

(LAC 43:XV.105, 1105-1109, 2111, 2113, 2311, 2323, 2731, 2733, 3103, 3115, 3705, 5423, 5424, and 5425)

Under the authority of the Louisiana Surface Mining and Reclamation Act, particularly R.S. 30:901 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation has amended LAC 43:XV, (Statewide Order 29-O-1) the Louisiana Surface Mining Regulations, governing valid existing rights and revegetation success standards for post-mining land uses of pastureland and wildlife habitat.

The Department of the Interior, Office of Surface Mining Reclamation and Enforcement, under the provisions of 30 CFR 732.17(d), has notified the Louisiana Office of Conservation, Injection and Mining Division of changes in Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and the federal regulations promulgated pursuant to SMCRA which make it necessary for Louisiana to modify its Surface Mining Regulatory Program to remain consistent with all federal regulations. The director of the Office of Surface Mining Reclamation and Enforcement approved the amendments in *Federal Register*, Vol. 67, No. 38, February 26, 2002, pp. 8717-8719 and Vol. 67, No. 221, November 15, 2002, pp. 69123-69129.

**Title 43**

**NATURAL RESOURCES**

**Part XV. Office of Conservation - Surface Mining**

**Subpart 1. General Information**

**Chapter 1. General**

**§105. Definitions**

A. ...

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*Valid Existing Rights*Ca set of circumstances under which a person may, subject to office approval, conduct surface coal mining operations on lands where §922.D of the Act and §1105 of these regulations would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of §1105 of these regulations or §922.D of the Act. A person seeking to

exercise valid existing rights must comply with all other pertinent requirements of the act and the regulatory program.

a. **Property Rights Demonstration.** Except as provided in §105.*Valid Existing Rights.c*, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of §922.D of the Act or §1105 of these regulations. Applicable state law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

b. Except as provided in §105.*Valid Existing Rights.c*, a person claiming valid existing rights also must demonstrate compliance with one of the following standards.

i. **Good Faith/All Permits Standard.** All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of §922.D of the Act or §1105 of these regulations. At a minimum, an application must have been submitted for any permit required under Subpart 3 of these regulations.

ii. **Needed for and Adjacent Standard.** The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of §922.D of the Act or §1105 of these regulations. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §922.D of the Act or §1105 of these regulations. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of §922.D of the Act or §1105 of these regulations when the office approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the office may consider factors such as:

(a). the extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of §922.D of the Act or §1105 of these regulations depend upon use of that land for surface coal mining operations;

(b). the extent to which plans used to obtain financing for the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations;

(c). the extent to which investments in the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations; and

(d). whether the land lies within the area identified on the life-of-mine map submitted under §2535.A.3 before the land came under the protection of §1105.

a. **Roads.** A person who claims valid existing rights to use or construct a road across the surface of lands protected by §1105 of these regulations or §922.D of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of surface coal mining operations in §105:

i. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the person has a legal right to use the road for surface coal mining operations;

ii. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, and, under the document creating the right-of-way or easement and under subsequent conveyances, the person has a legal right to use or construct a road across the right-of-way or easement for surface coal mining operations;

iii. a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §1105 of these regulations or §922.D of the Act; or

iv. *valid existing rights* exist under §105.*Valid Existing Rights.a* and b.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:901-932.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998), LR 29:939 (June 2003).

## **Subpart 2. Areas Unsuitable for Mining**

### **Chapter 11. Areas Designated by Act of Congress**

#### **§1105. Areas Where Mining Is Prohibited or Limited**

A. No surface coal mining operation shall be conducted on the following lands unless the applicant has either valid existing rights, as determined under §2323, or qualifies for the exception for existing operations under §1109.

1. - 4.a. ...

b. where the office allows the public road to be relocated or the area affected to be within 100 feet of such road, after public notice and opportunity for a public hearing in accordance with §1107.D, and after making a written finding that the interests of the affected public and landowners will be protected;

5. - 7. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:901-932.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:940 (June 2003).

#### **§1107. Procedures**

A. ...

B. The office shall reject any portion of the application that would locate surface coal mining operations on land protected under §1105 unless:

1. the site qualifies for the exception for existing operations under §1109;

2. a person has valid existing rights for the land, as determined under §2323;

3. the applicant obtains a waiver or exception from the prohibitions of §1105 in accordance with §1107.D or E; or

4. for lands protected by §1105.A.3, both the office and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with §1107.F.

C. If the office is unable to determine whether the proposed operation includes land within an area specified in §1105.A.1 or is located closer than the limits provided in §1105.A.6 or 7, the office shall transmit a copy of the relevant portions of the permit application to the federal, state or local government agency with jurisdiction over the protected land, structure or feature for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within 30 days of receipt of the request. The notice must specify that another 30 days is available upon request, and that the office will not necessarily consider a response received after the comment period provided. If no response is received within the 30-day period or within the extended period granted, the office may make the necessary determination based on the information it has available.

D. §1107.D does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that join a public road, as described in §1105.A.4.b. Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in §1105.A.4.b) or where the applicant proposes to relocate or close any public road, the office or public road authority designated by the office shall:

1. require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

2. provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;

3. if a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and

4. make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the office or public road authority determines that the interests of the public and affected landowners will be protected.

E.1. Subsection 1107.E does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that connect with an existing public road on the side of the public road

opposite the dwelling, as provided in §1105.A.5. Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the applicant shall submit with the application a written waiver by lease, deed or other conveyance from the owner of the dwelling clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

2. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver prior to August 3, 1977 from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

3.a. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

b. A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public-property records pursuant to state laws or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

F.1. Where the office determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the office shall transmit to the federal, state or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond. The notice must specify that another 30 days is available upon request, and that failure to interpose a timely objection will constitute approval. The office may not issue a permit for a proposed operation subject to the provisions of this Paragraph unless all affected agencies jointly approve.

2. Subsection 1107.F does not apply to lands for which a person has valid existing rights, as determined under §2323 or lands within the scope of the exception for existing operations in §1109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:940 (June 2003).

### **§1109. Exception for Existing Operations**

A. The prohibitions and limitations of §1105 do not apply to surface coal mining operations for which a valid permit, issued under Subpart 3 of these regulations, exists when the land comes under the protection of §1105. This exception applies only to lands within the permit area as it exists when the land comes under the protection of §1105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:941 (June 2003).

**Subpart 3. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration and Development Procedures Systems**

**Chapter 21. Coal Exploration and Development**

**§2111. General Requirements: Development Operations Involving Removal of More Than 250 Tons**

A. - A.7. ...

8. for any lands listed in §1105, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of §1105, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:942 (June 2003).

**§2113. Applications: Approval or Disapproval of Development of More Than 250 Tons**

A. - B.3 ...

4. will, with respect to exploration activities on any lands protected under §1105, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the office will provide reasonable opportunity to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105, to comment on whether the finding is appropriate.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:942 (June 2003).

**Chapter 23. Surface Mining Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information**

**§2311. Relationship to Areas Designated Unsuitable for Mining**

A. ...

B. If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required by §1107.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:942 (June 2003).

**§2323. Valid Existing Rights Determination**

A. OSM is responsible for determining valid existing rights for federal lands listed at §1105. The office is responsible for determining valid existing rights for all non-Federal lands listed at §1105. The provisions of this Section apply when the office is responsible for determining valid existing rights.

B. A request for a valid existing rights determination must be submitted if surface coal mining operations will be conducted on the basis of valid existing rights under §1105. This request may be submitted before submitting an application for a permit or boundary revision.

1. Requirements for property rights demonstration. If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105. *Valid Existing Rights*.b, the applicant must provide a property rights demonstration under §105. *Valid Existing Rights*.a. This demonstration must include the following items:

a. a legal description of the land to which the request pertains;

b. complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which your request pertains;

c. a complete chain of title for the surface and mineral estates of the land to which the request pertains;

d. a description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

e. a description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Louisiana property law;

f. complete documentation of the nature and ownership, as of the date that the land came under the protection §1105, of all property rights for the surface and mineral estates of the land to which the request pertains;

g. names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

h. if the coal interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of the applicant's property rights claims;

i. any comments that the applicant received in response to the notification provided under §2323.B.1.h.

2. Requirements for Good Faith/All Permits Standard. If the request relies upon the good faith/all permits standard in §105. *Valid Existing Rights*.b.i, the applicant must submit the information required under §2323.B.1. The applicant also must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:

a. approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came under the protection of §1105;

b. application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of §1105;

c. an explanation of any other good faith effort that the applicant or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of §1105.

3. Requirements for Needed for and Adjacent Standard. If the request relies upon the needed for and adjacent standard in §105. *Valid Existing Rights*.b.ii, the applicant must submit the information required under §2323.B.1. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §1105.

4. Roads. If the request relies upon one of the standards for roads in §105. *Valid Existing Rights*.c.i-iii, documentation must show that:

a. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the applicant has a legal right to use the road for surface coal mining operations;

b. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, and, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right-of-way or easement to conduct surface coal mining operations; or

c. a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §1105 of these regulations or §922.D of the Act.

#### C. Initial Review of Request

1. The office shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements of §2323.B. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of §2323.B, the office shall notify the applicant and establish a reasonable time for submission of the missing information.

3. When the request includes all applicable components of the submission requirements of §2323.B, the office shall implement the notice and comment requirements of §2323.D.

4. If the information requested under §2323.C.2 is not provided within the time specified or as subsequently extended, the office shall issue a determination that valid existing rights have not been demonstrated, as provided in §2323.E.4.

#### D. Notice and Comment Requirements and Procedures

1. When the request satisfies the completeness requirements of §2323.C, the applicant must publish a public

notice in accordance with §3103.A. This notice must invite comment on the merits of the request. The notice shall contain, at a minimum:

a. the location of the land to which the request pertains;

b. a description of the type of surface coal mining operations planned;

c. a reference to and brief description of the applicable standards under the definition of valid existing rights in §105;

i. if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105. *Valid Existing Rights*.b, the notice also must include a description of the property rights claimed and the basis for that claim;

ii. if the request relies upon the standard in §105. *Valid Existing Rights*.c.i, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations;

iii. if the request relies upon the standard in §105. *Valid Existing Rights*.c.ii, the notice also must include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations;

d. if the request relies upon one or more of the standards in §105. *Valid Existing Rights*.b, c.i, and c.ii, a statement that the office will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by §2323.D.3, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim;

e. a description of the procedures that the office will follow in processing the request;

f. the closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice;

g. a statement that interested persons may obtain a 30-day extension of the comment period upon request; and

h. the name and address of the office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

2. The office shall promptly provide a copy of the notice required under §2323.D.1 to:

a. all reasonably locatable owners of surface and mineral estates in the land included in the request; and

b. the owner of the feature causing the land to come under the protection of §1105, and, when applicable, the



agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of §1105.

3. The letter transmitting the notice required under §2323.D.2 must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments received after the closing date of the comment period.

#### E. How a Decision Will Be Made

1. The office must review the materials submitted under §2323.B, comments received under §2323.D, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the office must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the office deems necessary to remedy the inadequacy.

2. Once the record is complete and adequate, the office must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in §105. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

3. Impact of Property Rights Disagreements. This Paragraph applies only when the request relies upon one or more of the standards in §105.*Valid Existing Rights*.b, c.i, and c.ii.

a. The office must issue a determination that the applicant has not demonstrated valid existing rights if property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The office will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This Paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under §§2323.D.1 or D.3.

b. If the record indicates disagreement as to the accuracy of property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the office must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under §105.*Valid Existing Rights*.a, c.i, or c.ii, as appropriate. The office must then proceed with the decision process under §2323.E.2.

4. The office must issue a determination that the applicant has not demonstrated valid existing rights if information that the office requests under §§2323.C.2 or E.1 is not submitted within the time specified or as subsequently extended. The office will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.

5. After making a determination, the office must:

a. provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the

determination applies, to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105; and

b. publish notice of the determination in a newspaper of general circulation in the parish in which the land is located.

F. Administrative and Judicial Review. A determination that the applicant has or does not have valid existing rights is subject to administrative and judicial review under §§3301 and 3303.

G. Availability of Records. The office must make a copy of that request available to the public in the same manner as the office must make permit applications available to the public under §2119. In addition, the office must make records associated with that request, and any subsequent determination under §2323.E, available to the public in accordance with the requirements and procedures of §6311.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:942 (June 2003).

## **Chapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan**

### **§2731. Protection of Public Parks and Historic Places**

A. - A.1. ...

2. if valid existing rights exist or joint agency approval is to be obtained under §1107.F, to minimize adverse impacts.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:944 (June 2003).

### **§2733. Relocation or Use of Public Roads**

A. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under §1107.D, the applicant seeks to have the office approve conduction of the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way, or seeks approval for relocating a public road.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:944 (June 2003).

## **Chapter 31. Public Participation, Approval of Permit Applications and Permit Terms and Conditions**

### **§3103. Public Notices of Filing of Permit Applications**

A. - A.4. ...

5. if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with §1107.D, a concise

statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

A.6. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:944 (June 2003).

### §3115. Criteria for Permit Approval or Denial

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

c. not on any lands subject to the prohibitions or limitations of §1105; or

4.d. - 16. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:945 (June 2003).

## Chapter 37. Small Operator Assistance

### §3705. Eligibility for Assistance

A. - A.1. ...

2. establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

a. the pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

b. the pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

A.2.c. - A.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:945 (June 2003).

## Subpart 5. Permanent Program Performance Standards

### Chapter 53. Permanent Program Performance Standards: Surface Mining Activities

#### §5423. Revegetation: Standards for Success

A. - B.1.d.iv. ...

e. The criteria and procedures for determining ground cover and production success are found at §5424.

2. - 8. ...

a. The criteria and procedures for determining ground cover and stocking success are found at §5425.

B.9. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 21:1082 (October 1995), LR 29:945 (June 2003).

#### §5424. Revegetation: Standards for SuccessC Post-Mining Land Use of Pastureland

##### A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and production success for areas being restored to pastureland.

2. Pursuant to §5423, ground cover and production success on pastureland must be determined on the basis of the following conditions:

a. general revegetation requirements of the approved permit;

b. ground cover density; and

c. production.

3. The permittee is responsible for determining and measuring ground cover and production and submitting this data to the commissioner for evaluation. Procedures for making these determinations are described below.

##### B. Success Standards and Measurement Frequency

###### 1. Ground Cover

a. Ground cover shall be considered acceptable if it is at least 90 percent of the approved success standard at a 90 percent statistical confidence level for any two of the last four years of the five-year responsibility period. The success standard for ground cover shall be 90 percent.

i. Ground cover must be measured over each noncontiguous area that is proposed for release. The aggregate of areas with less than 90 percent ground cover must not exceed 5 percent of the release area. These areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of 90 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of 90 percent. Refer to sampling technique for ground cover in §5424.C.2.a.

b. Ground cover shall consist of the species mixture approved in the original permit or an approved acceptable species mixture as recommended by the USDA/Natural Resources Conservation Service (NRCS) for use in that area. No more than 15 percent of the stand can be approved species not listed in the permit.

c. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a .10 alpha error). Whenever ground cover is equal to or exceeds the success standard, the statistical confidence interval test does not have to be determined.

d. Ground cover success and forage production success need not be met during the same year.

e. Ground cover shall be sampled once per year during any two of the last four years of the five-year responsibility period to verify cover data.

###### 2. Forage Production

a. The success standard for production of hay on pastureland shall be 90 percent of an approved reference area, if a reference area is established, or 90 percent of the estimated yield found in the Soil Conservation Service (now Natural Resources Conservation Service (NRCS)) parish soil survey. The estimated yields are those expected under a high level of management and were determined by the NRCS based on records of farmers, conservationists and extension agents.

b. Production shall be sampled for at least two separate years. Any two of the last four years of the five-year responsibility period may be selected.

3. Reference Area Requirements

a. Reference areas must be representative of soils, slope, aspect, and vegetation in the premined permit area. However, in cases where differences exist because of mixing of several soil series on the reclaimed area or unavailability of a reference area as herein described, yields must be adjusted.

b. Reference area pastureland must be under the same management as pastureland in the reclaimed area. This means that it must:

- i. consist of similar plant species and diversity as approved in the permit;
- ii. be currently managed under the same land use designation as the proposed mined release area;
- iii. consist of soils in the same land capability class;
- iv. be located in the general vicinity of the mined test area to minimize the impact of differing weather;
- v. use the same fertilizer and pest management techniques;
- vi. use fertilizer rates based on the same yield goal;
- vii. be mowed at the same time to the same height as the reclaimed area;
- viii. use identical harvest dates and plant populations; and
- ix. use any other commonly used management techniques not listed above such as adequate weed and insect control, provided the pastureland area and the reference plot are treated identically.

c. Reference areas shall consist of a single plot (whole plot) at least four acres in size. Either statistically adequate subsampling or whole plot harvesting may be used to determine yields.

d. Reference plot forage yields must be at a level that is reasonably comparable to the parish average for the given crop. Reference plot yields that are less than 80 percent of the parish average are highly suspect and may be rejected.

e. Reference areas may be located on undisturbed acreage within permitted areas. If not so located, the permittee must obtain from the landowner(s) a written agreement allowing use of the property as a reference area and allowing right of entry for regulatory personnel.

f. When release areas and reference plots fall on different soil series, adjustments must be made to compensate for the productivity difference.

C. Sampling Procedures

1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites;
- ii. a sampling technique unaffected by the sampler's preference; and
- iii. sufficient samples to represent the true mean of the vegetation characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area

and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover type being measured. Additionally, at least one ground cover sample point must be measured in each noncontiguous unit, if the release area does not consist of a single unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit", of vegetation shall be classified by species as acceptable or unacceptable as follows.

Acceptable	Unacceptable
Vegetation approved in permit	Vegetation not approved in permit
Dead vegetation or litter from acceptable species	Rock or bare ground
Acceptable	Not approved in permit

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at one-foot intervals along a 100-foot tape. Each randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Productivity

i. When evaluating productivity, two components that may potentially influence the end results of production yields are time of harvest and moisture content.

(a). Time of Harvest. Herbaceous species must be harvested at times and frequencies appropriate to the plant species (i.e., cool-season species should be sampled in the winter or spring; warm-season species should be sampled in the summer or fall). Sampling should be timed to coincide with seed ripeness or the mature stage of the target vegetative species. Plant communities that are comprised of both cool- and warm-season species should be sampled when the overall plant community production is at a peak. If

an area has not had herbaceous biomass removed (i.e., mowing, baling, grazing) since the last sampling, then sampling must not be conducted until the vegetation is removed and regrowth has taken place.

(b). Moisture Content. The moisture content of harvested herbaceous biomass and other vegetative components must be standardized, in order to eliminate weight variations due to moisture content. The weight of harvested vegetation is to be standardized by oven-drying at 60° C for 24 hours or until the weight stabilizes.

ii. Productivity can be evaluated by hand-harvesting or with mechanized agricultural implements. Productivity measurements must be obtained during the growing season of the primary vegetation species. Productivity is estimated from only the current season's growth. There are two methods that can be used to evaluate production: using sampling frames for harvesting plots or whole-field harvests.

(a). Sampling Frames. A sampling frame shall be an enclosure, of known dimension appropriate for sampling pasture lands, capable of enclosing the sample location. A sample location shall be established at each of the randomly chosen sites, such that the center of the sampling frame is the random point. The permittee shall clip the biomass 2 inches above ground level within the frame. The biomass to be clipped shall be from all plant species growth whose base lies within the sampling frame. This biomass shall then be weighed and recorded. As each frame is clipped and weighed, the biomass shall be put into a bag for oven drying. Samples shall be oven-dried to a constant weight and reweighed to determine dried weight. All data collected from the clippings within the sampling frame shall be recorded and analyzed.

(b). Whole Area Harvesting. If whole release area harvesting is chosen as the method for data collection, the entire area shall be harvested and the data recorded and analyzed.

iii. If truckloads of bales are weighed for hay production when a whole area is harvested, at least three truckloads from each 100 acres are weighed. Each truckload should have at least three large round bales or 20 square bales. A sample will consist of the average bale weight per truckload. A statistically adequate sample size must be obtained. Multiply the number of hay bales per area by the average bale weight to obtain total production for that area. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

iv. If performing statistical comparisons for hay production when a whole field is harvested, the weights of either 10 percent or 15 bales, whichever is greater, are converted to pounds per acre (lbs/ac) by taking their average weight and multiplying that figure by the total number of bales, divided by the number of acres harvested. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

v. To determine which bales to weigh, randomly select a number from one to ten then count and weigh every tenth bale thereafter until the minimum number or 10 percent of the bales have been weighed. The first and last bale of any noncontiguous field or site should not be

weighed. The bales shall be counted, but if the random number falls on either of the two bales mentioned, either advance one bale or select the bale immediately previous to the last bale produced.

### 3. Sample Adequacy

#### a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

Where:

n = minimum number of samples needed;

t<sup>2</sup> = squared t-value from the T-Table;

s<sup>2</sup> = initial estimate of the variance of the release (or reference) area; and

(0.1x)<sup>2</sup> = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples is equal to or less than the initial minimum number, the initial sampling will satisfy the sampling requirements. If the number of samples needed is greater than the initial minimum number, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

#### b. Productivity Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s<sup>2</sup>) must be based on oven dry weight)

Where:

n = minimum number of samples needed;

t<sup>2</sup> = squared t-value from the T-Table;

s<sup>2</sup> = initial estimate of the variance of the release (or reference) area; and

(0.1x)<sup>2</sup> = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

#### D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or production for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or production value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and average forage production was insufficient, but close to the standards, the permittee may submit the data to the commissioner to determine if the production was acceptable when statistically compared to the standards using a t-test at a 90-percent statistical confidence interval.

3. Raw yield data from reclaimed areas and raw data from reference areas must first be oven dried to remove moisture, then adjusted by the parish soil survey average yields before statistical comparisons can be made.

E. Maps

1. When a proposed reclamation phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of and reference plots;
- b. the location of each sample point;
- c. the area covered by the sampling; and
- d. all permit boundaries.

F. Mitigation Plan

1. Ground cover and forage productivity must equal or exceed the standards for reclamation phase III liability release for at least two sampling years during the second through the fifth years following completion of the last augmented seeding. If productivity is not achieved by these dates, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal farming practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new phase III release proposal.

2. If renovation, soil substitution or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:945 (June 2003).

**§5425. Revegetation: Standards for SuccessC Post-Mining Land Use of Wildlife Habitat**

A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and stocking success for areas developed for wildlife habitat.

2. Pursuant to §5423, ground cover and stocking success on wildlife habitat must be determined on the basis of the following conditions:

- a. general revegetation requirements of the approved permit;
- b. ground cover; and
- c. tree or shrub stocking and survival.

3. The permittee is responsible for measuring and determining ground cover and stocking and submitting this

data to the commissioner for evaluation. Procedures for making these determinations are described below.

B. Success Standards and Measurement Frequency

1. Ground Cover

a. Ground cover shall be considered acceptable if it has at least 70 percent density with a 90 percent statistical confidence for the last year of the five year responsibility period.

b. The aggregate of areas with less than 70 percent ground cover must not exceed five percent of the release area. These individual areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of not less than 70 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of not less than 70 percent.

c. No more than 35 percent of the stand can consist of approved species not listed in the permit.

2. Tree and Shrub Stocking Rate

a. The stocking rate for trees and shrubs shall be determined on a permit-specific basis after consultation and approval by the Louisiana Department of Wildlife and Fisheries. Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved post-mining land use. When this requirement is met and acceptable ground cover is achieved, the five-year responsibility period shall begin.

b. Tree and shrub stocking rate shall be sampled once during the last year of the five-year responsibility period. The woody plants established on the revegetated site must be equal to or greater than 90 percent of the stocking rate approved in the permit with 90 percent statistical confidence. Trees and shrubs counted shall be healthy and in place for not less than two growing seasons. At the time of final bond release at least 80 percent of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable minimum period of responsibility. The permittee must provide documentation of this in the form of paid receipts, reclamation status reports, and normal correspondence.

C. Sampling Procedures

1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites,
- ii. a sampling technique unaffected by the sampler's preference, and
- iii. sufficient samples to represent the true mean of the vegetative characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover type being measured. Additionally, if the release area does not consist of a single unit, at least one sample point must be measured in each noncontiguous unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to

allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit", of vegetation shall be classified by species as acceptable or unacceptable as follows:

Acceptable	Unacceptable
Vegetation approved in permit	Vegetation not approved in permit
Dead vegetation or litter from acceptable species	Rock or bare ground
Acceptable	Not approved in permit

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at one-foot intervals along a 100-foot tape. Each randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Sampling Circles (Trees/Shrubs)

i. A sampling circle shall be a round area of known radius. The permittee shall establish a sampling circle at each randomly selected sampling point such that the center of the sampling circle is the random point. Permittee may draw the circle by attaching a string to a stake fixed at the random point and then sweeping the end of the string (tightly stretched) in a circle around the stake. The permittee shall count all living trees and shrubs within each of the sampling circles. In more mature tree/shrub areas, the stakes may need to be extended to elevate the string above the growth.

ii. To count as a living tree or shrub, the tree or shrub must be healthy and must have been in place for at least two years. At the time of liability release, 80 percent must have been in place for three years.

3. Sample Adequacy

a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial

minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

Where:

n = minimum number of samples needed;

t<sup>2</sup> = squared t-value from the T-Table;

s<sup>2</sup> = initial estimate of the variance of the release (or reference) area; and

(0.1x)<sup>2</sup> = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

b. Sampling Circles (Trees/Shrubs) Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s<sup>2</sup>) must be based on oven dry weight)

Where:

n = minimum number of samples needed;

t<sup>2</sup> = squared t-value from the T-Table;

s<sup>2</sup> = initial estimate of the variance of the release (or reference) area; and

(0.1x)<sup>2</sup> = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or stocking for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or stocking value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and/or tree and shrub average stocking density is insufficient, but close to the standards, the permittee may submit the data to the Commissioner to determine if the revegetation is acceptable when statistically compared to the standards using a t-test at a 90-percent statistical confidence interval.

E. Maps

1. When a proposed reclamation phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of each transect and sampling circle location,
- b. the area covered by the sampling, and
- c. all permit boundaries.

**F. Mitigation Plan**

1. Ground cover must be greater than or equal to 70 percent coverage and tree and shrub stocking must achieve the revegetation standards by the fifth year of the five-year responsibility period. If these standards are not achieved by this date, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal agronomic practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new Phase III release proposal.

2. If renovation, soil substitution, or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:901-932.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:948 (June 2003).

James H. Welsh  
Commissioner

0306#032

**RULE**

**Department of Revenue  
Office of the Secretary**

**Penalty Waiver (LAC 61:III.2101)**

Under the authority of R.S. 47:1603 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of the Secretary, amends LAC 61:III.2101 pertaining to a penalty waiver for delinquent filing or delinquent payment.

The purpose of this Rule is to inform the public of the documentation required when submitting requests for waiver of delinquent filing or late payment penalty and of factors that will be considered by the Department of Revenue in evaluating waiver requests. Title 47 Section 1603 provides that if the failure to file on time or the failure to timely remit the full amount due is not due to the negligence of the taxpayer, but is due to other causes set forth in written form and considered reasonable, the secretary may waive the penalty in whole or in part. When the penalty exceeds \$5,000, the waiver must be approved by the Board of Tax Appeals.

**Title 61**

**REVENUE AND TAXATION**

**Part III. Department of Revenue; Administrative Provisions and Miscellaneous**

**Chapter 21. Interest and Penalties**

**§2101. Penalty Waiver**

A. The secretary may waive a penalty in whole or in part for the failure to file a return on time or the failure to timely remit the full amount due when the failure is not due to the taxpayer's negligence and is considered reasonable. All penalty waiver requests must be in writing and be accompanied by supporting documentation. If the combined penalties for a tax period exceed one hundred dollars, all of the facts alleged as a basis for reasonable cause must be fully disclosed in an affidavit sworn before a notary public in the presence of two witnesses and accompanied by any supporting documentation. The affidavit must be signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the sworn affidavit may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. In lieu of an affidavit, the taxpayer may submit a Request for Waiver of Penalties for Delinquency Form signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the Request for Waiver of Penalties for Delinquency Form may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. The Request for Waiver of Penalties for Delinquency Form must be accompanied by any supporting documentation.

B. Before a taxpayer's request for penalty waiver will be considered, the taxpayer must be current in filing all tax returns and all tax, penalties not being considered for waiver, fees and interest due for any taxes/fees administered by the Department of Revenue must be paid.

C. In determining whether or not to waive the penalty in whole or in part, the department will take in account both the facts submitted by the taxpayer and the taxpayer's previous compliance record with respect to all of the taxes/fees administered by the Department of Revenue. Prior penalty waivers will be a significant factor in assessing the taxpayer's compliance record. Each waiver request submitted by the taxpayer will be considered on an individual basis. Each tax period or audit liability will be considered separately in determining whether the penalty amount mandates approval of the waiver by the Board of Tax Appeals. The delinquent filing and delinquent payment penalties will also be considered separately in making this determination.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:1603.

**HISTORICAL NOTE:** Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 27:866 (June 2001), amended LR 29:950 (June 2003).

Cynthia Bridges  
Secretary

0306#015

**RULE**

**Department of Revenue  
Policy Services Division**

Natural Resources: Severance Tax  
Definition of Payout  
(LAC 61:1.2903)

Under the authority of R.S. 47:633, 47:648.3, and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, amends LAC 61:1.2903.A to clarify the definition of *payout*.

Revised Statute 47:633(7)(c)(iii), 47:633(9)(d)(v), and 47:648.3 allow severance tax suspensions for horizontal, deep, and new discovery wells. The suspensions are limited to 24 months or until payout of the well cost, whichever comes first. Payout occurs when gross revenue from the well less royalties and operating costs directly attributable to the well equal the well cost as approved by the Office of Conservation. Because payout of the well cost triggers the end of the severance tax suspension, the computation should be uniform for all taxpayers. This amendment clarifies that operating costs do not include any costs that were included in the well cost approved by the Office of Conservation.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 29. Natural Resources: Severance Tax**

**§2903. Severance Taxes on Oil; Distillate, Condensate  
or Similar Natural Resources; Natural Gasoline  
or Casinghead Gasoline; Liquefied Petroleum  
Gases and Other Natural Gas Liquids; and Gas**

A. Definitions

\* \* \*

*Payout* the payout of the well cost for a horizontal well as referred to in R.S. 47:633(7)(c)(iii), a deep well as referred to in R.S. 47:633(9)(d)(v), and a new discovery well as referred to in R.S. 47:648.3 occurs when gross revenue from the well, less royalties and operating costs directly attributable to the well, equals the well cost as approved by the Office of Conservation. Operating costs are limited to those costs directly attributable to the operation of the exempt well, such as direct materials, supplies, fuel, direct labor, contract labor or services, repairs, maintenance, property taxes, insurance, depreciation, and any other costs that can be directly attributed to the operation of the well. Operating costs do not include any costs that were included in the well cost approved by the Office of Conservation.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633, 47:648.3, and 47:1511.

HISTORICAL NOTE: Adopted by the Department of Revenue, Severance Tax Division, August 1974, amended and promulgated LR 3:499 (December 1977), amended LR 20:1129 (October 1994), repromulgated LR 20:1299 (November 1994), amended LR 23:1167 (September 1997), LR 24:2321 (December 1998), LR 29:951 (June 2003).

Cynthia Bridges  
Secretary

0306#014

**RULE**

**Department of State  
Office of the Secretary of State  
Division of Archives**

Records Management Policies and Practices  
(LAC 4:XVII.Chapters 1-15)

The Department of State, Division of Archives, Records Management and History, in accordance with R.S. 44:405, and with the Administrative Procedure Act R.S. 49:950 et seq., has adopted LAC Title 4, Part XVII Records Management Policies and Practices. This text is being inserted to provide official guidance for state agencies in establishing and maintaining an active records management program as required by R.S. 44:410 et seq.

**Title 4**

**ADMINISTRATION**

**Part XVII. Records Management Policies and Practices**

**Chapter 1. Agency Records Management Officer  
Designation**

**§101. Designation**

A. In compliance with R.S. 44:411, on or before July 1 of each state fiscal year, the chief executive officer of each agency, as defined by R.S. 44:402 shall designate a records management officer to act as liaison between the division and the agency on all matters related to records management for the term of one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:951 (June 2003).

**§103. Process**

A. Each agency shall communicate their records management officer designation by completing form SS ARC 940 Records Management Officer Designation Form, (including signature of the chief executive officer and the date the designation was signed) and submitting the completed form to the state archivist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:951 (June 2003).

**§105. Responsibilities of an Agency Records  
Management Officer**

A. Each agency should select a records management officer who:

1. can communicate effectively with agency personnel and with the division's personnel;
2. has adequate knowledge of how your agency is organized and its operations;
3. has the ability to work with the agency's information services section on records management issues related to electronic records created and maintained by the agency;
4. has the authority to oversee the records management program of the agency, including:
  - a. the development and implementation of an agency retention schedule;



b. the compliance with Division and legal requirements for agency records;

c. the temporary storage of records at the State Records Center (if necessary) or the transfer of records for permanent storage with the State Archives (if required or requested);

d. and the processing of disposal requests and destruction of agency records as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:951 (June 2003).

### **§107. Changes in Records Management Officer Designees**

A. Agencies wishing to change their agency's designee before their designation period has expired, must notify the State Archivist within 30 days of such a change by completing form SS ARC 940 and noting "AMENDMENT" on top of the page.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

## **Chapter 3. Retention Schedule Development**

### **§301. Definitions**

A. Unless otherwise defined in this Chapter, the definitions for key terms in this chapter are provided in R.S. 44:402.

*Approved Retention Schedule*Ca retention schedule which has been approved by the state archivist or his designee.

*Records Series*Ca group of related or similar records, regardless of medium, that may be filed together as a unit, used in a similar manner, and typically are evaluated as a unit for determining retention periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

### **§303. Records Inventory**

A. To facilitate the development of agency retention schedules in compliance with R.S. 44:411, each agency shall:

1. review the functions and activities of their agency;

2. develop a list of records produced, received and maintained by the agency;

3. identify the inclusive dates, the medium and volume of records maintained for each record series held by the agency. This provision may be facilitated by agencies completing a records Management Inventory Form (SS ARC 960) for each record series to document their decision process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

### **§305. Writing the Retention Schedule**

A. Each agency shall submit a draft retention schedule to the State Archives for review and approval. In developing the draft, each agency will:

1. conduct adequate research to determine the length of time each record series needs to be maintained based on their administrative, legal, fiscal, and any historical/informational value. Legal citations should be included if statutes or rules exist, on either the state or federal level, the retention of certain records series;

2. develop specific retention and disposition instructions for each records series, including transference of inactive records to an appropriate records storage facility, the maintenance of long-term or permanent records within the agency, and/or transfer of custody of permanent records to the State Archives control.

3. develop a draft retention schedule, using form number SS ARC 932, providing a brief description of the records series, suggested retention periods for each records series, recommended disposition instructions for non-permanent records, a notation for any records series that contains confidential information at the time of its creation in the remarks section and any citations used to formulate the retention value, if applicable. In the event that a subset of records are "declared" confidential due to pending investigation or similar event, a list of the records series involved should be transmitted to the State Archives within 30 days of the declaration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

### **§307. Retention Schedule Maintenance**

A. Each agency shall review its retention schedule annually to identify any record series requiring an addition, amendment or deletion to the agency's approved schedule. Each agency shall submit an amended SS ARC 932 noting any changes to its existing retention schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

### **§309. Retention Schedule Renewal**

A. An agency schedule, once approved by the State Archives will be valid for five years from the date of approval. Ninety days prior to the five year anniversary of a schedule's approval, each agency shall submit their schedule for renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

## **Chapter 5. Storage of Records in State Records Center**

### **§501. Definitions**

A. For the purpose of this Chapter the following definitions apply.

*Approved Records Center Box*Ca box that is 1.2 cubic feet in size, with dimensions of 15"x12"x10" and having no lids (fan fold tops only).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

### **§503. Eligibility**

A. In accordance with R.S. 44:408, the State Records Center may accept records from state agencies when they meet the following criteria.

1. The records are scheduled on an approved Records Retention Schedule.

2. The records belong to an office of the State Executive or Legislative branches of Louisiana government.

3. The records are considered inactive (not from current operational year).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

### **§505. Packing Instructions**

A. Each box containing eligible records (as listed above) must comply with the following requirements.

1. The records are boxed in an approved records center box.

2. The records in each box are from the same records series with the same retention value.

3. The records should be packed in the same order as they are filed in the agency.

4. Boxes should not contain mixed media (i.e., microfiche with paper records).

5. Approximately 1 inch of space should be left in each box to facilitate retrieval.

6. Records should not be placed on top of other records in the box.

7. The approximate weight of each box should not exceed 35 pounds.

8. Packing tape is discouraged. If utilized, it may only be used to reinforce the bottom of the box.

9. To further protect the records in case of fire, agencies are strongly encouraged to pack their boxes with the records facing the long (15 inch) side of the box. If records being packed are letter-sized (8 1/2" x 11") the remaining space in the back of the box, may include additional records with the records facing the short side (12 inch) end of the box.

10. Boxes should not contain hanging file folders, three ring binders or binder clips.

11. If boxes contain records in a media other than paper (i.e., microfilm, audio/video tapes), the media type should be noted on the transmittal within the description of contents section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

### **§507. Labeling Instructions**

A. Each agency must assign a unique agency box number to each box to be transferred by affixing the number to the upper right hand corner of the narrow end of the box (the end of the box) and may include a brief descriptor for the records (i.e., 1997, FY2002, A-F, #1001-2500, etc.) to the left of the agency box number. This box number (and descriptor) must correspond to an entry made on the agency's transmittal forms submitted for the box.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

### **§509. Disposal Date Cycles**

A. Records stored in the State Records Center must be assigned one of two disposal cycles. Assignment should be made based on the following criteria:

1. July Cycle. Records that are retained based on fiscal year retention periods or meet their retention period between January 1 and June 30 during a given year.

2. January Cycle. Records that are retained based on calendar year retention periods or meet their retention period between July 1 and December 31 during a given year.

AUTHORITY NOTE: Promulgated in accordance with RS. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

### **§511. Records Transmittal**

A. Prior to the delivery of records to the State Records Center for storage, an agency must provide the Records Center with completed Records Transmittal and Receipt forms (SS ARC 103), which will serve as an inventory sufficiently detailed to enable the Records Center to retrieve any record needed by the agency for reference.

1. A separate transmittal form (SS ARC 103) should be completed for each disposal date (i.e., January or July of a given year).

2. For each box, the agency should include the minimum information on their transmittal forms:

a. agency box number;

b. beginning and ending dates for the records in the box;

c. a brief meaningful description of the contents of the box (i.e., Employees A-E, Batch 151-210);

d. a notation if the records are on a media other than paper;

e. a notation if any of the records contain confidential information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

### **§513. Arranging Transfer**

A. After completing the transmittal forms for the boxes to be stored at the State Records Center, the agency shall mail or fax the transmittals to the State Records Center at least two weeks prior to the date of transfer the agency is requesting. The State Records Center will contact the agency's records officer to finalize the delivery date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

### **§515. Delivery of Records**

A. In general, delivery dates will be set on a first-come, first-serve basis. The State Records Center reserves the right to postpone or rearrange delivery dates or accept records of an agency in special circumstances or emergency situations, if the State Records Center staff or the Records Management Officer Statewide determine such an action is necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

#### **§517. Ownership and Access**

A. Records stored at the State Records Center remain property of the agency depositing them at the State Records Center. Only the depositing agency's designated employees and to a limited extent, State Records Center personnel will be provided access to records stored in the State Records Center. Any requests to see an agency's records from non-authorized parties will be forwarded to the agency for written approval. A written approval must include the name of the person, the Records Center box number for the records being requested and the signature of the agency's records officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

#### **§519. Requesting Stored Records**

A. An agency may request access to or check out their agency's records by following the following procedures.

1. The agency must contact the State Records Center by either mail, fax, phone or e-mail requesting access to or checking out a file(s) or box(es) by listing the Records Center box number for the boxes being requested and providing the file name(s) if particular files are being requested.

2. Requests will be processed on a first-come, first-serve basis. In the event that an agency has a true emergency, the State Records Center will try to accommodate a request for expedited service.

3. The State Records Center will contact the agency's Records Officer when the records in question are ready for review or pick-up. Upon arrival to the State Records Center, agency personnel will be required to show proper identification before access to the records will be granted.

4. Records being checked out from the State Records Center require a signed check out invoice by the employee checking out the records.

5. Once the agency checks out a record, the responsibility to return the record to the State Records Center belongs to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

#### **§521. Disposal of Records**

A. Twice a year the State Records Center will generate disposal requests for agency records that have met their retention periods. Such disposal requests will be forwarded to the agency records officer for agency disposal approval. The agency will have 45 days to respond to the request. The State Records Center reserves the right to return to the agency any records listed on the disposal request after the allotted 45 days has lapsed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

#### **§523. Agency Disposal Approval**

A. Once the agency receives the disposal request, the agency records officer must ascertain if any of the records listed on the request require further retention or are required for pending or on-going litigation. The records officer should consult with the agency's legal counsel if there are any legal holds that require the records being retained for a longer duration.

1. If the records are not needed for any legal or administrative need, the agency records management officer shall sign the statement indicating that in consultation with the agency's legal counsel the records are no longer needed by the agency and may be destroyed.

2. If any record is still required by the agency, they may designate the records to be retained by noting the new disposal date requested and the reason for the extended retention. The agency may request the records be transferred back to their custody if they do not wish the records to remain in the State Records Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

#### **§525. Archival Review**

A. Prior to the destruction of any records in the State Records Center, the State Archives will review each disposal request for possible archival records. In the event that the State Archives wishes to retain some records for archival review, the State Archives will notify the agency which agency records they are transferring to the Archives acquisition section for processing. Once transferred to the State Archives the ownership of the record will transfer from the agency to the State Archives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

### **Chapter 7. Transferring Records for Inclusion in Archives Collection**

#### **§701. General**

A. In accordance with R.S. 44:411, agency shall secure written approval from the state archivist (or his designee) prior to the disposing of any records of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

#### **§703. Eligibility**

A. In accordance with R.S. 44:401, the State Archives may accept records from state agencies according to the following criteria:

1. the records are scheduled on an approved Records Retention Schedule;

2. the records have been determined to be of historical value or mandated by law to be kept as permanent records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

**§705. Packing Instructions**

A. For records that easily fit into archive box, each box containing eligible records as listed in §703 must comply with the following requirements.

1. The records are boxed in an approved archival box.
2. The records in each box are from the same records series with the same retention value.
3. The records should be packed in the same order as they are filed in the agency.
4. Boxes should not contain mixed media (i.e., microfiche with paper records).
5. The approximate weight of each box should not exceed 35 pounds.
6. Taping of printed descriptions to the box and use of packing tape is prohibited.
7. To further protect the records in case of fire, agencies are strongly encouraged to pack their boxes with the records facing the long (15 inch) side of the box. If records being packed are letter-sized (8 1/2" x 11") the remaining space in the back of the box, may include additional records with the records facing the short side (12 inch) end of the box.
8. Boxes should not contain hanging file folders, three ring binders or binder clips;
9. If boxes contain records in a media other than paper (i.e., microfilm, audio/video tapes), the media type should be noted on the transmittal within the description of contents section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

**§707. Non-Standard Sized Packing Instructions**

A. Prior to sending records that exceed 8 1/2" x 14", the submitting agency should contact the Archives Acquisitions Section for further instructions on how to pack such records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

**§709. Labeling Instructions**

A. For boxes donated or sent to the State Archives for permanent storage:

1. the agency must assign a unique agency number to each box to be transferred by affixing the number on one of the long sides of the box;
2. a brief descriptor for the records (i.e., Dept of State, Correspondence 6/1/00C12/31/00; Bd of Ethics Campaign Finance Reports #98-04 through #98-100) under the box number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

**§711. Archives Transmittal Form Required**

A. Prior to the delivery to the State Archives, the submitting agency must provide completed Archives Transmittal Forms, which will serve as an inventory,

sufficiently detailed, to enable Archives staff to retrieve records as they are needed.

1. On each transmittal form, the agency shall include:
  - a. name and address of agency;
  - b. the records officer name and official title within the agency;
  - c. contact information (phone and e-mail address) for the records officer;
  - d. any restrictions that exist for the records included on the particular form;
  - e. the total number of boxes/items to be transferred;
  - f. signature of transmitting records officer and date signed by officer;
  - g. page number and total number of pages of transmittal (i.e., Page 1 of 5).

2. For each box or item, agency shall include on the transmittal:
  - a. title of records series as it appears on the agency's approved retention schedule;
  - b. more than one box may be listed on an Archival Transmittal Form.

3. Submission and the acceptance of an Archives Transmittal Form from an agency or donor by the State Archives constitutes an Act of Donation to the State Archives by the agency or donor, and transfers all rights and ownership of the records to the State Archives.

4. The State Archives will return a signed copy of the Archival Transmittal form signed by the receiving archivist after the transmittal has been processed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

**§713. Arranging Transfer**

A. After completing the Archival Transmittal forms for the items to be transferred to the State Archives, the agency or donor shall transmit the forms at least one week prior to the date of transfer requested by the agency or donor. The State Archives, after reviewing the forms, will contact the agency's or donor's contact listed on the transmittal to finalize the delivery date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

**§715. Delivery of Records**

A. In general, delivery dates will be set on a first-come, first-served basis. The State Archives reserves the right to postpone or rearrange delivery dates or accept records of an agency in special circumstances or emergency situations, if the Archives staff or Records Management Officer Statewide determine such an action is necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

**§717. Long Term Records Storage**

A. Records transferred to the State Archives for permanent or long-term storage remain property of the agency depositing them with the State Archives. Only the depositing agency's designated employees and to a limited

extent, Archives staff, will be provided access to records stored with the State Archives. Any requests to see an agency's records from non-authorized parties (including public records requests) will be forwarded to the owner agency for written approval. Written approval must include the name of the person authorizing the access, the person access is being granted and the archives storage box number(s) in which the record(s) is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

### **§719. Requesting Stored Records**

A. An agency may request access to or check out their agency's records by following the following procedures.

1. The agency must contact the State Archives by either mail, fax, phone or e-mail requesting access to or checking out a file(s) or box(es) by listing the agency box number for the boxes being requested and providing the file name(s) if particular files are being requested.

2. Requests will be processed on a first-come, first-served basis. In the event that an agency has a true emergency, the State Archives will try to accommodate a request for expedited service.

3. The State Archives will contact the agency's records officer when the records in question are ready for review or pick-up. Upon arrival to the State Archives, agency personnel will be required to show proper identification before access to the records will be granted.

4. Records being checked out from the State Records Center require a signed check out invoice by the employee checking out the records.

5. Once the agency checks out a record, the responsibility to return the record to the State Archives belongs to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

## **Chapter 9. Destruction of Public Records**

### **§901. General**

A. In accordance with R.S. 44:411, agency shall secure written approval from the State Archivist (or his designee) prior to the disposing of any records of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

### **§903. Scheduled Records**

A. Agencies wishing to dispose of records listed on their agency's approved retention schedule shall submit to the State Archivist or his designee, Form SS ARC 930 (Request for Authority to Dispose of Records). Form SS ARC 930 must have the signature of either the agency's:

1. records officer as designated in LAC 4:XVII, Chapter 1; or

2. the chief executive officer; or

3. the general counsel for the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

### **§905. Non-Scheduled Records**

A. Agencies wishing to dispose of records not listed on their agency's approved retention schedule shall submit to the State Archivist or his designee, Form SS ARC 930 (Request for Authority to Dispose of Records) and a completed Records Management Inventory Form for each non-scheduled series listed on the disposal request. Form SS ARC 930 must have the signature of either the agency's:

1. records officer as designated in LAC 4:XVII, Chapter 1; or

2. the chief executive officer; or

3. the general counsel for the agency

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

### **§907. Destruction Authorization**

A. Once a disposal request has been received by the State Archivist (or his designee), the agency will be notified within 30 days of receipt that:

1. their disposal request has been approved;

2. their disposal request has been denied along with an explanation why approval was not granted;

3. their disposal request contains records that should be transferred to the State Archives for possible inclusion in the State Archives; or

4. their disposal request requires more research and requires an additional 30 days to issue a response to the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

### **§909. Legal Hold Policy**

A. Each agency is required to develop and implement an internal process for placing legal holds on records that are involved in state or federal investigations and/or litigation. Agencies should submit their policy within 30 days of creation to the State Archives. The policy should address:

1. the agency's internal disposal approval process;

2. which employees are notified of a legal hold, when they are told and how they are told;

3. who is responsible for contacting possible third party vendors who may house records or data covered under a legal hold;

4. what steps should be taken by notified employees to safeguard records or data covered under a legal hold;

5. the agency's legal hold forms (including file level notice sheets) and instructions for any legal hold form/release forms created by the agency to implement the plan;

6. who within the agency has legal authority to lift the legal hold once the litigation or investigation has concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

### §911. Disposal Methods

A. Once approval for disposal has been granted, an agency should dispose of the agency records in a manner acceptable to the level of confidentiality the record requires.

1. If a records series contains no information considered confidential in nature, an agency may use any acceptable disposal method including:

- a. landfill;
- b. recycling;
- c. shredding;
- d. incineration;
- e. maceration;
- f. pulverization.

2. If a records series contains information considered confidential in nature, an agency may use any of the following disposal methods:

- a. shredding;
- b. incineration;
- c. maceration;
- d. pulverization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

### §913. Certificate of Destruction

A. Agencies shall document the destruction of their records by maintaining a Certificate of Destruction for all records requiring destruction approval from the State Archives. Such Destruction Certificate shall consist of either:

1. the current State Archives Certificate of Destruction form (SS ARC 933) along with the approved destruction request from the State Archives; or

2. an equivalent document that records the date the records were destroyed, the method of destruction, the approved Authority to Dispose of Records Form and the signature of at least one witness to the destruction or removal of the records. In the event that a recycling company is used for destruction, the date the records are transferred to the recycler for destruction will constitute the destruction date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

## Chapter 13. Electronic Records

### Subchapter A. Agency Responsibilities

#### §1301. Definitions

A. For the purpose of this Chapter the following definitions apply.

*Agency Record*Ca record as defined by R.S. 44:402.

*Electronic Mail (E-mail)*Ca system that enables an agency to compose, transmit, receive and manage text and/or graphic electronic messages and images across networks and through gateways connecting other local area networks.

*Long-Term Record*Ca record with a total retention requirement of over 10 years but less than permanent.

*Permanent*Ca record with a total retention of life of the agency and/or the state and intended to be maintained in perpetuity.

*Short-Term Record*Ca record with a total retention requirement of 10 years or less.

*Transitory*Ca transitory records are records that have limited or no administrative value to the agency and are not essential to the fulfillment of statutory obligations or to the documentation of agency functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

#### §1303. General

A. The head of each agency must ensure:

1. that a program is established for the management of state records created, received, retained, used, transmitted, or disposed of on electronic media;

2. that the management of electronic state records are integrated with other records and information management records management programs of the agency;

3. that electronic records management objectives, responsibilities and authorities are incorporated into pertinent agency directives and policies;

4. that procedures are established for addressing records management requirements, including, retention, access and disposition requirements;

5. that training is provided for users of electronic records systems, in the operation, care, and handling of the information, equipment, software and media used in the systems;

6. that documentation is developed and maintained about all electronic state records in a manner adequate for retaining, reading, or processing the records and ensuring their timely, authorized disposition; and

7. that a security program for electronic state records is established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

### Subchapter B. State Archives Imaging Policy

#### §1305. Imaging System Survey; Compliance

A. In accordance with R.S. 44:413, each agency shall complete a State Archives Imaging System Survey and provide any amendments to their survey in a timely manner when original information provided is no longer accurate.

1. Survey Information. Each agency shall provide the following information to the State Archives:

a. a listing of all records series maintained/managed by the system being surveyed;

b. the hardware and software being used (including model and version numbers) including total storage capacity;

c. the type and density of media being used by the system (magnetic, WORM, etc.);

d. the type and resolution of images being produced (TIFF class 3 or 4, and dpi);

e. the agency's quality control procedures for image production and maintenance;

f. the agency's back up procedures for the system and where (on-site, off-site) and how many sets of images exist;

g. the agency's migration plan for purging images from the system that have met their retention period.

2. Initial Survey Implementation. Any agency with an imaging system in operation before June 1, 2003 shall submit their survey response to the State Archives by no later than July 31, 2003.

3. New Systems. In addition to completing the Imaging System Survey, any agency implementing an imaging system on or after June 1, 2003, must contact the State Archives prior to implementation to ensure that a retention schedule, approved by the State Archives, is in place and that the system can comply with their schedule's requirements.

4. Amending Imaging Survey Response. In the event that any changes in the initial information providing on an agency's Imaging Survey response, the agency shall submit an amendment to their survey response within 90 days of the change occurring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

### **§1307. Acceptable Means of Records Preservation**

A. In accordance with R.S. 44:410, electronic digitizing (imaging) is an acceptable means for records preservation for the maintenance of short-term agency records, as defined in LAC 4:XVII.1301.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

### **§1309. Short-Term Records**

A. Agencies utilizing imaging for the creation and maintenance of short term records, may use imaging without maintaining the original or a microfilm copy of the original provided that:

1. the records series has been included on the agency's retention schedule submitted to and approved by the State Archivist or his designee;

2. a quality control inspection of the images is conducted prior to the destruction of the original source documents to ensure the visibility and accessibility;

3. the proper approval has been secured from the State Archives prior to the destruction of the original source documents;

4. the records series maintained on imaging systems are stored in such a manner as to comply with the retention requirements (i.e., like retentions on the same optical disk or subdirectory).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

### **§1311. Long-Term and Permanent Records**

A. In accordance with R.S. 44:410, agencies utilizing imaging for the creation and maintenance of long term and/or archival records, may use imaging for administrative purposes provided that for preservation purposes the agency either:

1. maintain the original source documents for the retention period listed on the agency's retention schedule; or

2. produce a microfilm back up of the records and store the microfilm with the State Archives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

### **Subchapter C. Electronic Mail (E-mail) Guidelines**

#### **§1321. Series Retention of E-mail**

A. E-mail should be retained based on content not on media type or storage limitations. Agencies should not encourage employees to unilaterally discard E-mail because of artificial limits on E-mail box capacities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

#### **§1323. E-Mail is Not a Records Series**

A. E-mail should not be treated as a single record series for retention scheduling purposes. E-mail should be incorporated into existing records series maintained by an agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

#### **§1325. Types of E-Mail**

A. There are two broad categories of E-mail: record and non-record, based on their administrative and retention requirements.

1. Transitory. Transitory records are records that have limited or no administrative value to the agency and are not essential to the fulfillment of statutory obligations or to the documentation of agency functions.

a. Examples. Transitory information can include the following: unsolicited and junk e-mails not related to agency work, listserv and other e-mail broadcast lists that require subscription (including newspapers), reminders for meetings and events (i.e. cake in the conference room, staff meeting moved from 2 p.m. to 3 p.m.), personal non-work related e-mails received by employees.

b. Retention. There is no retention requirement for transitory messages. Public officials and employees receiving such communications may delete them immediately without obtaining approval from the State Archives.

2. Record. Electronic mail records are records that have administrative value to the agency or are required to be maintained under state or federal law for a specified amount of time.

a. Retention. The retention requirement for e-mail records must follow suit with records with similar content found in other media (i.e., paper, film, electronic image). In the event that the content of the message does not fit into an existing record series on an approved retention schedule, the e-mail should be maintained in a manner consistent with R.S. 44:36 and should added to the agency's approved retention schedule if the series is expected to remain active.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

### §1327. Maintenance of Electronic Mail

A. Records created using an e-mail system may be saved for their approved retention period by one of the following.

1. Print message and file in appropriate hard copy file.
2. Place in folders and save on personal network drive or C: drive.
3. Save to removable disk (including CD-ROM). 3.5" disks are not recommended for retention periods of more than one year due to the instability of this medium.
4. Transfer to an automated records management software application.
5. Managed at the server by an automated classification system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

### §1329. User Responsibilities

A. It is the responsibility of the user of the e-mail system, to manage e-mail messages according to their agency's retention schedule.

1. It is the responsibility of the sender of e-mail messages within the agency's e-mail system and recipients of messages from outside the agency to retain the messages for the approved retention period.

2. Names of sender, recipient, date/time of the message, as well as any attachments must be retained with the message. Except for listserv mailing services, distribution lists must be able to identify the sender and recipient of the message.

3. User responsibilities may be mitigated by the use of a server level automated classification system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

### §1331. Agency Responsibilities

A. Each agency should adopt and disseminate to their employees an agency Electronic Mail (E-mail) Proper Use Policy. The policy should include:

1. defining official use and set limits on personal use of electronic messaging (similar to limitations that exist for telephone, fax, and personal mail);
2. prohibiting the use of electronic messaging system to promote the discrimination (on the basis of race, color, national origin, age, marital status, sex, political affiliation, religion, disability or sexual preference), promotion of sexual harassment, or to promote personal, political, or religious business or beliefs;
3. prohibiting employees from sending electronic messages under another employee's name without authorization;
4. prohibiting the altering of electronic messages, including any attachments;
5. agency process for storing and maintaining electronic messages for the duration of the message's retention period;
6. notice that users of an agency's electronic messaging system should not expect a right of privacy and that electronic messages may be monitored for compliance and abuse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

### §1333. Use of Records Management Application (RMA) Software

A. Agencies may use records management application (RMA) software to manage records in digital form. RMA software categorizes and locates records and identifies records that are due for disposition. RMA software also stores, retrieves, and disposes of the electronic records that are stored in its repository. Agencies should use RMA software that complies with DoD 5015.2-STD, "Design Criteria Standard for Electronic Records Management Software Applications," as issued by the U.S. Department of Defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

## Chapter 15. Microfilm Policy

### §1501. General

A. This policy applies to the microfilming of any agency record that is to be maintained solely in microfilm format and to all microfilm which is created or maintained for the full retention period of the record as a security copy of an agency record. This policy does not apply to convenience film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

### §1503. Definitions

A. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections have the meanings defined in the R.S. 44:402.

*Aperture Card* Ccard with a rectangular opening(s) into which 16mm/35mm microfilm frames can be inserted, mounted, or pre-mounted.

*Batch* Ca quantity of chemicals or film which has been prepared at one time, and which has been identified through labeling or through other means by the manufacturer as a batch or lot.

*CAD (Computer Assisted Design)* Ca method of creating microimages by computer-driven laser.

*Convenience Film* Cmicrofilm copies of records created only for convenience of use and considered non records under R.S. 44:1.

*Declaration by the Camera Operator* CA target photographed on film following the filmed records that provides identification of beginning and ending records on the film; signature of the camera operator; date the declaration was filmed; and reduction range, if more than one ratio has been used.

*Diazo* Ca photographic film containing one or more photosensitive layers composed of diazonium salts in a polymeric material which react with coupler(s) to form an azo dye image after film processing.



*Duplicate Microfilm*Ca microfilm copy made from the original or master negative. Can be silver, diazo or vesicular film.

*Essential Record*Any agency record necessary to resume or continue an agency's business; to recreate its legal and financial status; and to preserve the rights of the agency, its employees, and its clients.

*Microfilm*Roll microfilm, microfiche, computer output microfilm (COM), and all other formats produced by any method of microphotography or other means of miniaturization on film.

*Microfilm Container*Cgeneric term for any enclosure in close or direct contact with film such as a reel, can, bag, folder, sleeve (sheath), jacket, envelope, window mount or mat, slide mount, carton, cartridge, cassette, and aperture card.

*Microfilming*Cthe methods, procedures, and processes used to produce microfilm.

*Original Microfilm*Cfirst generation of film produced when records are filmed.

*Silver Original*Cfirst generation silver-gelatin film or other archival quality film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

#### **§1505. Access to Referenced Standards and Practices**

A. The copyrighted standards and recommended practices issued by the American National Standards Institute (ANSI) and/or the Association for Information and Image Management (AIIM) listed in this chapter are considered best practice and each agency should strive to meet their minimum requirements for all microfilming of state records. A copy of each of the standards mentioned in this rule will be on file upon adoption of this rule and available for public inspection by appointment, during regular working hours at the Louisiana State Archives Building, 3851 Essen Lane, Baton Rouge, LA 70809. The standards are distributed by and available from the Association for Information and Image Management (AIIM), Suite 1100, 1100 Wayne Avenue, Silver Spring, MD 20910-5699.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

#### **§1507. Retention Schedule Compliance**

A. Microfilming of records must be in compliance with an approved agency retention schedule except, if an agency does not have an approved retention schedule, a microfilming needs assessment must be completed by the State Archives to determine if filming is justified.

1. For microfilm maintained as roll film, no more than one record series is permitted on each roll of microfilm.

2. Original records that have been microfilmed may be destroyed or source documents that have been filmed prior to the expiration of their retention periods if the microfilm complies with this policy and in accordance with R.S. 44:36 and R.S. 44:39.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

#### **§1509. Use of Original Microfilm**

A. After the completion of production tests and quality inspection, original microfilm must not be unwound and used for any purpose except:

1. to produce duplicate copies of the film;
2. to carry out periodic inspection of stored original film;
3. to expunge records required by law;
4. to destroy records when retention period has been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

#### **§1511. Annual Report Requirement**

A. All agency microfilm produced in house by an agency or by an outside vendor shall make an annual report to the State Archives in the form of letter or report and shall include:

1. equipment used by agency or vendor;
2. records series annually filmed by agency;
3. total number of:
  - a. 100' 16 mm reels;
  - b. 215' 16 mm, reels;
  - c. 35 mm reels;
  - d. microfiche;
  - e. jackets;
  - f. aperture cards;
  - g. images filmed;
  - h. duplicate reels produced.
4. the method(s) and/or vendor used to process agency microfilm;
5. the location of the original film produced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

#### **§1513. State Centralized Microfilm Unit**

A. In accordance with R.S. 44:415, all agencies shall contract with the State Archives for microfilming services. If the State Archives is unable to meet the agency's needs, the State Archives can grant permission for the agency to contract with a private vendor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

#### **§1515. Film Requirement**

A. Film with a polyester base must be used for records having a retention period of 10 years or more. Any film type may be used for records having a retention period of less than 10 years, provided the microfilmed record will last for the required retention period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

**§1517. Film Production**

A. The records to be filmed must be arranged, identified, and indexed for filming so an individual document or series of documents can be located on the film. In instances where records are not self-indexing (i.e. not in a readily identifiable numeric or alphabetic sequence) an index must be maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1519. Image Marking**

A. Any use of image marking should comply with standard ANSI/AIIM MS8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1521. Targets**

A. Whenever possible, targets must all face the same direction as the records being microfilmed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1523. Image Sequence**

A. Image sequence on roll microfilm must be at a minimum:

1. leaders with a minimum of 3 feet (36 inches) of blank film;
2. density target and resolution target;
3. title page (including agency of record);
4. records series identification page;
5. records on film;
6. declaration by camera operator;
7. density target and resolution target;
8. trailer with a minimum of 3 feet (36 inches) of blank film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1525. Retake Sequence**

A. Filming sequence for retakes and additions on all microfilm must be:

1. title target identifying the retake or addition records;
2. the retake or addition records; and
3. declaration of the camera operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1527. Splices**

A. Retakes and additions can be spliced either before the density and resolution targets at the beginning of the film or after the density and resolution targets at the end of the film. Retakes and additions can be on another roll of film if cross-indexed to the original roll on the title target and the container label of the retake.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1529. Inspection**

A. Original processed microfilm must be visually inspected according to the following procedures.

1. A visual inspection of microfilm within two weeks of creation must be completed to verify legibility.
2. Film of essential records or records having a retention period of 10 years or more must be inspected image by image.
3. Film of non-essential records having a retention period of less than 10 years must be inspected at least every 10 feet of each roll or every third microfiche.
4. Images of documents must be uniformly placed on the film and must be free of any defects in the filming area that would interfere with the documents being read.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1531. Cameras and Ancillary Equipment**

A. It is recommended that camera equipment be calibrated, tested, or otherwise inspected and adjusted at least twice annually or more often if required to comply with manufacturer's specifications or recommended operating and maintenance procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1533. Storage of Original Microfilm**

A. Original film should be stored in a separate building from where duplicate copies or the original record are housed. In addition, films of different generic types, such as silver-gelatin, diazo, and vesicular films, should not be stored in the same storage room/vault or in rooms sharing common ventilation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1535. Storage of Original Microfilm at State Archives**

A. Original film of original records at the State Archives must be placed in an Archives vault on a different floor than the original records or duplicate film. Films of different generic types, should not be stored in the same vault.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

**§1537. Storage Environment**

A. Original microfilm must be stored in a storage room or vault that:

1. offers protection from fire, water, steam, structural collapse, unauthorized access, and other potential hazards;
2. is equipped with a fire alarm and fire suppression system;
3. has adequate temperature and humidity controls;

a. for original film of records with a retention of 10 years or more, temperature must not exceed 72 degrees Fahrenheit, and a constant relative humidity of 45 percent must be maintained with a maximum variation of plus/minus 5.0 percent relative humidity in a 24-hour period;

b. for original film of records with a retention period of 10 years or less, the maximum temperature must not exceed 77 degrees Fahrenheit, and a relative humidity range between 20 percent and 60 percent must be maintained with a maximum variation of plus/minus 5.0 percent relative humidity in a 24-hour period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

### **§1539. Containers and Storage Housing**

A. Storage housing materials must be noncombustible and non-corrosive. Microfilm containers for original microfilm must:

1. be used for processed microfilm to protect the film and facilitate identification and handling.
2. be chemically stable materials such as non-corrodible metals (anodized aluminum or stainless steel), peroxide-free plastics, and acid-free paper to ensure no degradation is caused to the images.
3. stored in a closed housing or may be stored on open shelves or racks if the film is in closed containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

### **§1341. Container Labels**

A. Labels must include:

1. whether the film is original microfilm or a duplicate, including generation number if known;
2. identification number;
3. name of agency;
4. records series title;
5. inclusive dates of records;
6. the beginning and ending records; and
7. retakes/additions, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

### **§1541. Inspection of Stored Original Microfilm**

A. Inspection of stored original microfilm may be conducted in accordance with the following standards:

1. ANSI IT9.11;
2. ANSI/AIIM MS45; and
3. ANSI/NAPM IT9.1.

B. When inspection is done, the sample of microfilm to be inspected for each storage room or vault, if more than one, must be 1/1000th of the total volume of stored microfilm or at least 100 microforms (rolls, jackets, microfiche, aperture cards, COM, etc.), whichever is greater. Sampling procedures must be established that will assure that all parts of the group of microfilm are represented.

C. Inspection must be conducted every five years. Microfilm that has been stored under temperature and/or

humidity conditions other than those specified in this policy must be inspected every two years.

D. Containers used to store the film must be inspected for evidence of rust, corrosion, or other deterioration and replaced, if needed.

E. Original microfilm must be inspected on a light box with rewinds or comparable equipment which will not scratch the film.

F. If deterioration is found, a more extensive inspection must be conducted to locate all deteriorating film.

G. Any deteriorating film must immediately be removed from the storage area and the problem corrected before returning the film to storage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

### **§1543. Computer Output Microfilm (COM)**

A. All policies for COM are the same as other microfilm formats, except:

1. The COM original must be wet processed silver-gelatin film for essential records and records with a retention of 10 years or more.
2. The following standards for production, testing, and inspection of COM are recommended:

- a. ANSI/AIIM MS1;
- b. ANSI/AIIM MS5;
- c. ANSI/AIIM MS28;
- d. ANSI/AIIM MS39;
- e. ANSI/AIIM MS43; and
- f. ANSI/NAPM IT9.17.

B. If bar coding is used, the procedures in technical report AIIM TR12 should be followed.

C. The COM original must be visually inspected every 10 feet.

D. Eye-legible titling information must include the following:

1. name of agency;
2. records series title;
3. date(s) of records; and
4. starting and/or ending indexing information.

E. A reduction ratio not exceeding 48:1 must be used.

F. Adherence image sequence for filming, mentioned in this policy is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

### **§1545. Jacketing**

A. All policies for jacketed microfilm are the same as other microfilm formats, except:

1. original microfilm may be placed in a jacket, if there is a security copy stored in the same fashion as original microfilm;

2. jacket header information should include a record identifier (name, number). If no security copy exists, the following must be included in the jacket header information:

- a. name of agency;
- b. records series title;
- c. date(s) of records; and
- d. starting and/or ending indexing information.

B. Header information must be created with a black carbon-type ribbon or ink that will not bleed, spread, or transfer.

C. Microfilm jackets should comply with ANSI/AIIM MS11.

D. The procedures in AIIM TR11 are recommended for the jacketing of film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

#### **§1547. Aperture Card/CAD Systems**

A. Film produced by aperture card/CAD systems are the same as other microfilm formats, except:

1. original microfilm and enclosure should pass the photographic activity test criteria outlined in the standard ANSI IT9.2;

2. a density test and a resolution test must be conducted on a sample of original microfilm at a minimum of once every 250 cards or every 1,000 images, whichever is greater;

3. aperture cards must have the following information on label headings:

- a. name of agency;
- b. records series title;
- c. date(s) of records; and
- d. unique identifier.

B. Adherence image sequence for filming, mentioned in this policy is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:963 (June 2003).

#### **§1549. Expungements**

A. Such action must comply with statutory law.

1. If roll film is spliced, the following information must be inserted in place of the expunged record(s):

- a. a start of expungement target;
- b. replacement documents for documents that were expunged (if necessary);
- c. an expungement certificate containing the following information:
  - d. the number of the district court ordering the expungement;
  - e. the signature, printed name, and title of the custodian of expunged records;
  - f. the date of expungement.

B. Images on film must not be expunged by punching holes through film, by using opaque, by blotting images with ink-type pen, or by using chemical means such as potassium dichromate (bleach) on film emulsion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:963 (June 2003).

#### **§1551. Destruction of Microfilmed Records**

A. Microfilmed records must be destroyed only in accordance with R.S. 44:411(A)(2). Microfilmed records scheduled for destruction must be disposed of in a manner that ensures protection for any sensitive or confidential information. Destruction of records on a roll of microfilm containing multiple records series must be done by destroying the whole roll of film at the time the records on the film that have the longest retention period are eligible for destruction or, if filmed prior to the effective date of these standards, by deleting the section of the film containing records eligible for destruction and splicing the film. If the film is spliced, a destruction notice containing the following information must be inserted in place of the deleted records:

1. the records series title and the inclusive dates of the records;
2. the signature and printed name of the agency records management officer (RMO) approving deletion of the records;
3. the date of the deletion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:963 (June 2003).

#### **§1553. Documentation and Record Keeping**

A. Microfilm Production

1. Agency records management officer (RMO) must require documentation to be maintained that identifies titles of records filmed, dates records filmed, disposition of records after filming, dates film processed, disposition of film, reduction ratio used, records series contained on each microfilm, and equipment on which each microfilm was filmed and processed. The documentation must be retained until final disposition of all microfilm documented in the log or equivalent.

B.1. The following information must be recorded for each inspection of stored microfilm:

- a. the quantity and identification of microfilm inspected;
- b. the condition of the microfilm, including description of any deterioration;
- c. any corrective action required;
- d. the date(s) of inspection and signed certification of inspector; and
- e. the date any corrective action was completed.

2. The inspection log of stored microfilm must be maintained by year and within each year numerically according to microfilm identifier or number.

C. Agency microfilm programs must be reviewed yearly by the agency records management officer (RMO) for compliance with R.S. 44, Chapter 5, and this policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:963 (June 2003).

W. Fox McKeithen  
Secretary of State

0306#022

# Notices of Intent

## NOTICE OF INTENT

### Department of Civil Service Civil Service Commission

Market Grade Adjustment; Rate of Pay upon Promotion; Pay upon Reallocation; Pay upon Job Correction or Grade Assignment; Rate of Pay upon Demotion; Gainsharing and Exceptional Performance

The State Civil Service Commission will hold a public hearing at 9 a.m. on Wednesday, August 6, 2003 in the auditorium of the Claiborne Building, 1201 Third Street, Baton Rouge, LA to consider amendments of Civil Service Rules 6.6, 6.7, 6.8, 6.10, 1.11, 1.27, 6.16.3 and 8.2.1 and the adoption of Rule 6.8.1.

Consideration will be given to the following.

#### **Amend Rule 6.6 Market Grade Adjustment**

(a) When the pay range for the grade to which a job is currently assigned is either not sufficient to compete with prevailing market conditions, or is found to exceed prevailing market rates, the director may, in accordance with Rules 6.1 and 3.1(n), authorize the assignment of the job to a grade with a more appropriate pay range. The individual pay rate of employees occupying jobs which are affected shall be set in accordance with Rule 6.8.1.

(b) Repealed, as of December 4, 1989.

#### **Explanation**

We are proposing that the rate of pay upon a Market Grade Adjustment be governed by the proposed new Rule 6.8.1. This change would negate the pay change upon an upward adjustment. When the pay grade of a job is moved upward by a Market Grade Adjustment, the employee would have the benefit of a higher range maximum. Also, if recruiting, retention, and market pay problems are severe enough to warrant a Market Grade Adjustment, the agency should use Special Entrance Rates of pay. The implementation of Special Entrance Rates in combination with the higher range maximum from the Market Grade Adjustment will allow agencies to give salary adjustments to employees.

It should also be noted that by no longer giving mandated salary increases for Market Grade Adjustments, Civil Service and the agencies will have more freedom to react to changing market conditions.

#### **Amend Rule 6.7 Rate of Pay upon Promotion**

- (a) No change.
- (b) No change.
- (c) No change.

(d) When an employee has been detailed with pay to a higher job and is promoted to that same job or a job at the same pay level or a higher pay level directly from the detail, his pay eligibility on promotion shall not be less than he received on detail.

(e) Subject to the provisions of subsection (f) of this rule, when an employee is promoted from a job assigned to one

pay schedule to a job with a higher range maximum in another pay schedule, his pay shall be adjusted as follows.

1. If the maximum of the job to which he is being promoted is less than 14 percent above his current maximum, his pay shall be increased by 7 percent.

2. If the maximum of the job to which he is being promoted is at least 14 percent but less than 21 percent above his current maximum, his pay shall be increased at least by 7 percent but not to exceed 10.5 percent.

3. If the maximum of the job to which he is being promoted is equal to or greater than 21 percent above his current maximum, his pay shall be increased by at least 7 percent but not to exceed 14 percent.

(f) No change.

#### **Explanation**

The current 6.7(d) only allows an employee to retain their detail pay when they are directly promoted from the detail job into the same job title. The change will allow an employee to keep their detail pay if they are directly promoted to a job that is at the same pay level or a higher pay level. We have had a limited number of cases where the implementation of a job study or reorganization has resulted in an employee losing pay upon a promotion due to the current detail rule.

The change to 6.7(e) will change the determination of promotion from the minimum of the job to the maximum of the job. The maximum of the job is a truer reflection of the worth of the job than is the range minimum.

#### **Amend Rule 6.8 Pay upon Reallocation**

When the Director changes the allocation of a position from one job to another by reallocation,

(a) If the job to which the position is allocated is in a higher grade in the same schedule or is in a grade with a higher maximum in another schedule, the affected employee's pay shall be set in accordance with Rule 6.7.

(b) Subject to the provisions of subsection (d) of this rule, if the job to which the position is allocated is in a lower grade in the same schedule or is in a grade with a lower maximum in another schedule, the affected employee's pay will not change, but shall be subject to provisions of Rule 6.15.

(c) Subject to the provisions of subsection (d) of this rule, if the job to which the position is allocated is in the same grade in the same schedule or is in a grade with the same maximum in another schedule, the employee's pay shall not change.

(d) If the position is reallocated in such a way that the current base supplement rate of pay authorized for the position is lost or reduced, the affected employee's pay shall be set no higher than his current salary and at the higher of the following:

- 1. the range maximum (this is a red circle rate) of the position from which he is being reallocated; or
- 2. within the range maximum plus the base supplement (this is not a red circle rate) authorized for the position to which he is to be reallocated.

### **Explanation**

This change removes all references to job corrections and grade assignments. Job corrections and grade assignments will now be governed by the new Rule 6.8.1 (see below).

#### **Adopt Rule 6.8.1 Pay upon Job Correction or Grade Assignment**

When the director assigns a job to a different grade or changes the allocation of a position from one job to another by job correction,

(a) If the job to which the position is job corrected is in a higher grade in the same pay schedule or is in a grade with a higher range maximum in another pay schedule, or if the job is assigned to a higher grade in the same pay schedule or to a grade with a higher range maximum in another schedule, the affected employee's pay shall not change. An employee shall not be paid below the minimum of the higher range.

(b) Subject to the provisions of subsection (d) of this rule, if the job to which the position is job corrected is in a lower grade in the same pay schedule or is in a grade with a lower range maximum in another pay schedule, or if the job is assigned to a lower grade in the same pay schedule or to a grade with a lower range maximum in another schedule, the affected employee's pay shall not change, but shall be subject to provisions of Rule 6.15.

(c) Subject to the provisions of subsection (d) of this rule, if the job to which the position is job corrected is in the same grade in the same pay schedule or is in a grade with the same range maximum in another pay schedule, or if the job is assigned to the same grade in the same pay schedule or to a grade with the same range maximum in another schedule, the affected employee's pay shall not change

(d) If the position is job corrected or if a job has a pay range change in such a way that the current base supplement rate of pay authorized for the position is lost or reduced, the affected employee's pay shall be set no higher than his current salary and at the higher of the following:

1. the range maximum (this is a red circle rate) of the position from which he is being changed; or
2. within the range maximum plus the base supplement (this is not a red circle rate) authorized for the position to which he is to be changed.

### **Explanation**

This rule change removes the pay change associated with job re-evaluations (grade assignment), market grade adjustments and job corrections when the pay grade is moved up. There are no changes to the rule regarding lateral or downward movements. In most cases job studies are the result of either organizational changes, market changes or are requested based upon the grade movements of related jobs. In those cases, the duties of the employee have not changed.

#### **Amend 6.10 Rate of Pay upon Demotion**

Subject to the provisions of Civil Service Rules 6.15 and 17.11(a) and (b)2, when an employee is demoted for any reason under any circumstances, his pay shall be reduced as follows.

(a) If the demotion is to a job within the same schedule or to a job in another schedule with a lower maximum his pay shall be reduced by a minimum of 7 percent and may be set at a lower rate in the range provided that it is no less than the minimum.

(b) Repeal.

(c) Repeal.

(d) Subject to the provisions of Rule 6.29, an appointing authority may grant exceptions to this rule for voluntary demotions. Exceptions shall not be granted by the appointing authority in an arbitrary or fraudulent manner designed to increase an employee's rate of pay. An appointing authority may, as part of a formal written policy, waive a pay increase on promotion for an employee who has been demoted without a decrease in pay within a six-month period.

### **Explanation**

The changes to (a), (b), and (c) of this rule are necessitated by the change to multiple pay schedules. It is no longer necessary to mandate a larger pay cut when moving from one pay schedule to another. The change to (d) allows agencies to not pay for a promotion for an employee who has recently demoted without a pay cut.

#### **Amend Rule 1.11 Demotion**

*Demotion*Ca change of a permanent or probationary employee from a position in one job to a position in another job which is assigned to a pay grade with a lower maximum.

### **Explanation**

The change to this definition is necessary in due to the change in Rule 6.10.

#### **Amend Rule 1.27 Promotion**

*Promotion*Ca change of a permanent employee from a position in one job to a position in another job which is assigned to a pay grade with a higher maximum.

### **Explanation**

The change to this definition is necessary in due to the change in Rule 6.10.

#### **Amend Rule 6.16.3 Gainsharing and Exceptional Performance**

This Rule establishes an incentive program designed to encourage increased efficiency and better performance in governmental operations. Subject to the provisions of Rule 6.29, and after obtaining a reward of monies from the incentive fund as established in the Louisiana Government Performance and Accountability Act, an appointing authority may implement an exceptional performance or gainsharing incentive reward program which provides for supplemental compensation to identify classified employees or classified employee groups responsible for efficiencies or exceptional performance. Where the agency is not covered by the Louisiana Government Performance and Accountability Act, the appointing authority shall obtain certification of efficiencies or exceptional performance as required by the Director of the Department of Civil Service. Employees must have been employed by the agency, program, or activity during the period when the efficiencies or the exceptional performance occurred and at the time the reward is distributed. Monetary rewards shall not be part of the classified employee's base pay, but rather shall be a lump sum reward not to exceed 20 percent of their annual base salary. Such reward shall not be considered in the determination of retirement benefits. Each appointing authority's supplemental compensation plan must be approved by the Civil Service Commission prior to distribution of the monies. The plans shall be posted in a manner that assures their availability to all employees. Such public posting shall identify the reward recipients and the amount received by each recipient.

### Explanation

The only change to this rule is the addition of "Exceptional Performance" in the title and the change of "and" to "or" in the fifth line. These changes more clearly denote the fact that the Gainsharing program is different from the Exceptional Performance program.

#### Amend Rule 8.2.1

From the date of the gubernatorial first primary election through Inauguration Day, specific approval must be obtained from the Director prior to making a permanent appointment to any position at or above one of the following pay ranges: GS-23, AS-620, SS-419, PS-115, WS-218, TS-315, unless the position has already been designated as a Shortage job, under Rule 7.20(d).

### Explanation

This Rule restricts permanent appointments in manager-level positions during the gubernatorial election transition period. This Rule is being amended to reflect the adoption of new pay schedules.

Allen H. Reynolds  
Director

0306#037

## NOTICE OF INTENT

### Department of Economic Development Office of the Secretary

Capital Companies Tax Credit Program  
(LAC 10:XV.327)

The Department of Economic Development, Office of the Secretary, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and in accordance with R.S. 51:1929, hereby gives notice of its intent to adopt the following additional Rules for the Louisiana Capital Companies Tax Credit Program, in order to provide direction to certified Louisiana capital companies who are seeking to invest certified capital in "Louisiana-based economic development infrastructure projects," as such term is used in R.S. 51:1923(12)(c) of the Louisiana Capital Companies Tax Credit Program (the "*CAPCO Program*"). The term "Louisiana-based economic development infrastructure projects" is not defined in the CAPCO Program. These proposed Rules are intended to provide a procedure for certified Louisiana capital companies seeking a designation of a "Louisiana-based economic development infrastructure project" for an intended investment in order to qualify for the tax credit under this program; and these proposed Rules further provide criteria that a project must meet in order to qualify for such a designation.

### Title 10

## FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

### Part XV. Other Regulated Entities

#### Chapter 3. Capital Companies Tax Credit Program

#### §327. Louisiana-Based Economic Development Infrastructure Projects

A. An applicant seeking this designation for an intended investment shall provide to the secretary the following information along with the request for this designation:

1. a description of the project;
2. a description of all sources and uses of financing for the project;
3. a description of the proposed investment;
4. an analysis of how the investment in the project furthers economic development within Louisiana;
5. a calculation of the percentage of the certified Louisiana capital company's total certified capital and total certified capital under management which will be invested in the project;
6. an analysis of whether the entity in which the certified Louisiana capital company proposes to invest is a qualified Louisiana business;
7. an analysis of whether the proposed investment meets the criteria set forth in §303.A.*Investment*. b);
8. a statement as to whether the business in which the certified Louisiana capital company proposes to invest, intends to acquire any real estate for resale or whether any real estate in which the certified Louisiana capital company proposes to invest is intended to be resold;
9. the charter documents for the entity that owns the Louisiana-based economic development infrastructure project and each intervening entity through which the certified Louisiana capital company owns its interest in the Louisiana-based economic development infrastructure project; and
10. copies of all management, maintenance, operations and other agreements which the certified Louisiana capital company contemplates being executed with respect to the Louisiana-based economic development infrastructure project, or if no such agreements have yet been prepared, a description of all contemplated arrangements.

B. A Louisiana-based economic development infrastructure project shall be designated by the secretary for purposes of qualifying the investment under R.S. 1923(12)(c) if it meets the criteria set forth in each of Paragraphs 1 through 5 of this Subsection B, or if it meets other criteria determined by the secretary from time to time.

1. The information shall demonstrate that 100 percent of the funds invested by the certified Louisiana capital company shall be used directly or indirectly:

a. for the acquisition, construction, modification, refurbishment or remodeling of physical facilities, other immovable property improvements or movable property which becomes affixed to or a component part of immovable property, in each case, located in Louisiana; or

b. as attendant expenses related to the investments, including without limitation, closing expenses, capital expenditure reserves, working capital, and reasonable fees and expenses relating to the management and operation of the facilities.

2. The facilities must accomplish at least two of the following, as determined by the secretary, or shall accomplish such other objectives as the secretary may determine from time to time:

a. provide below-market rental environments for "disadvantaged businesses" as defined in R.S. 51:1923(7);

b. provide attractive rental environment for the attraction of out-of-state companies in the targeted clusters identified in the state's Vision 2020 Plan to locate headquarters or operations in Louisiana;

c. provide below-market rental environments for qualified Louisiana startup businesses as defined in R.S. 51:1923(14);

d. provide attractive rental environments for qualified Louisiana technology-based businesses as defined in R.S. 51:1923(15); or

e. provide below market cost services.

3. The investment by the certified Louisiana capital company in the Louisiana-based economic development infrastructure project shall be made either to acquire an equity interest in an entity that directly or indirectly owns or acquires an interest in a Louisiana-based economic development infrastructure project, to provide debt financing to an entity that owns or acquires an interest in the Louisiana-based economic development infrastructure project, or to provide a combination of these investment mechanisms.

4. The secretary shall review and approve of the percentage of the certified Louisiana capital company's certified capital and total certified capital under management that is invested in the proposed project or project entity, in his or her discretion.

5. The secretary may adopt additional criteria for his or her approval of Louisiana-based economic development infrastructure projects.

C. An investment approved by the secretary which is made by a certified Louisiana capital company in a Louisiana-based economic development infrastructure project or an entity that directly or indirectly owns an interest in a Louisiana-based economic development infrastructure project in accordance with this Rule shall be deemed to "further economic development within Louisiana" for purposes of R.S. 51:1923(12).

D. Following the secretary's designation of an investment by a certified Louisiana capital company as a qualified investment in a Louisiana-based economic development infrastructure project, the secretary shall issue a letter to the certified Louisiana capital company applicant confirming the designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 29:

#### **Family Impact Statement**

These proposed Rules 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. There should be no known or foreseeable effect on: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; on family earnings and family budget; the behavior and responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to: Richard House, Executive Counsel, Legal Division, Louisiana Department of Economic Development, P. O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to: Capitol Annex Building, Second Floor, 1051 North 3rd Street, Baton Rouge, LA 70802. All comments

must be submitted (mailed and received) by 5:00 p.m. July 15, 2003.

Don J. Hutchinson  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Capital Companies Tax Credit Program**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no incremental costs or savings due to the implementation of these Rules into this program. Current staff will be sufficient to process and monitor these Rules within this program. There will be no increase in costs or savings. Funding for this program will come from the regular authorized appropriations received by the department and the economic development fund.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no expected impact on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no anticipated additional costs to directly affected persons or non-governmental groups. The economic benefit of such Rules will inure to Louisiana Capital Companies which invest in Louisiana-based economic development infrastructure projects, which is intended to provide assistance in the formation and expansion of new businesses which create jobs and enhance economic development throughout Louisiana by providing for the availability of venture capital financing for the development and operation of qualified Louisiana businesses.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Investments by Louisiana Capital Companies in such Louisiana-based economic development infrastructure projects will provide assistance in the formation and expansion of new businesses which create jobs and greatly enhance economic development throughout Louisiana by providing for the availability of venture capital financing for the development and operation of qualified Louisiana businesses, all of which will create increased competition and employment prospects for Louisiana residents throughout the state.

Richard House  
Executive Counsel  
Legal Division  
0306#021

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Bulletin 104C Louisiana K-12  
Educational Technology Standards  
(LAC 28:LXXV.Chapter 1)

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 the adoption of *Bulletin 104C Louisiana K-12*



*Educational Technology Standards.* Bulletin 104 will be printed in codified format as Part LXXV of the Louisiana Administrative Code. The Louisiana K-12 Educational Technology Standards will be disseminated to local school districts following publication. The document was previously disseminated to districts as Guidelines. The significance of the change to standards is the weight of required implementation. The change from Guidelines to Standards strengthen the implementation of educational technology initiatives throughout all schools and classrooms in the state.

**Title 28**  
**EDUCATION**

**Part LXXV. Bulletin 104C Louisiana K-12 Educational  
Technology Standards**

**Chapter 1. Purpose**

**Subchapter A. Educational Technology**

**§101. Mission Statement**

A. This document provides a framework for the integration of technology across the curriculum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**§103. Philosophy**

A. The Louisiana K-12 State Educational Technology Standards are based on the National Educational Technology Standards and the Louisiana State Content Standards. These technology standards support the beliefs set forth by the state educational technology goal: "All educators and learners will have access to technologies that are effective in improving student achievement."

B. The Louisiana K-12 State Educational Technology Standards parallel the foundation skills and core understandings embodied in the Louisiana Content Standards. Additionally, the standards are designed to reflect the conviction that technology is best understood and taught in a realistic and integrated setting in a variety of curriculum areas. The alignment of the technology standards with the foundation skills provides for such integration across all content areas. Consequently, these standards and the associated performance indicators are to be integrated in all aspects of the curriculum and not taught in isolation, utilizing fully the resources of the classroom, the school, and the community. The technology standards promote the development of technology/information literate students, including those with disabilities, to be self-directed learners, who individually and collaboratively use technology/information responsibly to create quality products and to be productive citizens. The focus is on learning with information and technology rather than learning about technology. Integration of these standards will be varied and dynamic, reflecting the diversity of instructional and student needs in our schools and districts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**§105. Definition**

A. Technology consists of any electronic tool used for solving problems, communicating clearly, processing information, increasing productivity, accomplishing a task,

making informed decisions, and enhancing the quality of life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**Subchapter B. Standards**

**§107. Technology Communication Tools  
(Communication Foundation Skill)**

A. Students use telecommunications to collaborate, publish, and interact with peers, experts and other audiences.

B. Students use a variety of media and formats to communicate and present information and ideas effectively to multiple audiences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**§109. Technology Problem-Solving and Decision-Making Tools (Problem Solving Foundation Skill)**

A. Students use appropriate technology resources for solving problems and making informed decisions.

B. Students employ technology for real world problem solving.

C. Students evaluate the technology selected, the process, and the final results through the use of informed decision-making skills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**§111. Technology Productivity Tools (Resource Access and Utilization Foundation Skill)**

A. Students use technology tools to enhance learning, increase productivity, and promote creativity.

B. Students use productivity tools to work collaboratively in developing technology-rich, authentic, student-centered products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**§113. Technology Research Tools (Linking and Generating Knowledge Foundation Skill)**

A. Students use appropriate technology to locate, evaluate, and collect information from a variety of sources.

B. Students use technology tools to process data and report results.

C. Students evaluate and select new information resources and technological innovations based on the appropriateness to specific tasks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**§115. Social, Ethical, and Human Issues (Citizenship Foundation Skill)**

A. Students understand the ethical, cultural, and societal issues related to technology.

B. Students practice responsible use of technology systems, information, and software.

C. Students develop positive attitudes toward technology uses that support lifelong learning, collaboration, personal pursuits, and productivity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### §117. Basic Operations and Concepts

A. Students demonstrate a sound understanding of the nature and operation of technology systems.

B. Students are proficient in the use of technology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### §119. Technology Standards and State Foundation Skills

A. How do the Technology Standards align with the State Foundation Skills?

Foundation Skills	Technology Standards
Communication	Technology Communication Tools
Problem Solving	Technology Problem Solving and Decision-Making Tools
Resource Access and Utilization	Technology Productivity Tools
Linking and Generating Knowledge	Technology Research Tools
Citizenship	Social, Ethical, and Human Issues Basic Operations and Concepts

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### Subchapter C. Performance Indicators

#### §121. Grades K-4

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Identify, explain, and effectively use input, output and storage devices of computers and other technologies (e.g., keyboard, mouse, scanner, adaptive devices, monitor, printer floppy disk, hard drive). (5,6)

2. Use accurate and developmentally appropriate terminology (e.g., cursor, software, hardware, pull down menu, window, disk drive, hard drive, CD-ROM, laser disc) when referring to technology. (6)

3. Discuss common uses of technology in daily life and the advantages and disadvantages those uses provide. (5,6)

4. Discuss basic issues related to responsible use of technology and information; and describe personal consequences of inappropriate use. (5)

5. Use a variety of developmentally appropriate resources and productivity tools (e.g., logical thinking programs, writing and graphic tools, digital cameras, graphing software) for communication, presentation, and illustration of thoughts, ideas, and stories (e.g., signs, posters, banners, charts, journals, newsletters, and multimedia presentation). (1,3,4)

6. Use technology tools (e.g., publishing, multimedia tools, and word processing software) for individual and for simple collaborative writing, communication, and publishing activities for a variety of audiences. (1,3)

7. Gather information and communicate with others using telecommunications (e.g., email, video conference, internet) with support from teachers, family members, or peers. (1,4,5,6)

8. Utilize search strategies employing keywords, phrases, and Boolean operators (and, or, not) to access and retrieve information. (4)

9. Evaluate electronic information for accuracy, relevance, appropriateness, comprehensiveness, and bias. (2,4,5)

10. Use technology resources to assist in problem-solving, self-directed learning, and extended learning activities. (2,4)

a. Technology Communication Tools

b. Technology Problem Solving and Decision-Making Tools

c. Technology Productivity Tools

d. Technology Research Tools

e. Social, Ethical, and Human Issues

f. Basic Operations and Concepts

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

#### §123. Grades 5-8

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Identify and define computer and networking terms (e.g. modem, file server, client station, LAN, Internet/Intranet, data storage device). (6)

2. Understand and apply common troubleshooting techniques. (6)

3. Demonstrate the operations of a computer (e.g., touch-keyboarding skills, save, organize and back-up files) and other peripheral devices (scanner, digital and video cameras, VCR, laser disc player) at an intermediate level. (6)

4. Compose and edit a multi-page document with appropriate formatting using word-processing skills (e.g., menu, tool bars, dialog boxes, spell check, thesaurus, page layout, headers and footers, word count, margins, tabs, spacing, columns, page orientation). (1,3,6)

5. Use information, media, and technology in a responsible manner which includes following the school's acceptable use policy, adhering to copyright laws, respecting the rights of others, and employing proper etiquette in all forms of communication. (4,5)

6. Recognize the importance of information technology and its effect on the workplace and society. (5)

7. Use multimedia tools and desktop publishing to develop and present computer-generated projects for directed and independent learning activities. (1,3)

8. Use technology tools (e.g., multimedia authoring, writing tools, digital cameras, drawing tools, web tools) to gather information for problem solving, communication, collaborative writing and publishing to create products for various audiences. (1,3,4)

9. Demonstrate intermediate e-mail skills (e.g., sending attachments, organizing an address book, forwarding messages). (1,4)

10. Understand Internet concepts (e.g., website, hypertext link, bookmarks, URL addresses) and apply intermediate on-line searching techniques (e.g., employ keyword, phrases, and Boolean Operators). (1,4)

11. Use telecommunications and online resources efficiently and effectively to collaborate with peers, experts, and others to investigate curriculum-related problems, issues, and information and to develop solutions or products for various audiences. (1,2,3,4)

12. Communicate information using spreadsheets and databases to visually represent data and integrate into other documents (e.g., entering data, formatting using formulas, analyzing data, and sorting). (1,2,3,4)

13. Determine when technology is useful and select the appropriate tool(s) and technology resources to address a variety of tasks and problems. (2)

14. Research and evaluate the accuracy, relevance, appropriateness, comprehensiveness, and bias of electronic information. (2,4,5)

a. Technology Communication Tools

b. Technology Problem Solving and Decision-Making Tools

c. Technology Productivity Tools

d. Technology Research Tools

e. Social, Ethical, and Human Issues

f. Basic Operations and Concepts

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

#### **§125. Grades 9-12**

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Apply strategies for identifying and solving routine hardware and software problems that occur during everyday use. (6)

2. Make informed choices among technology systems, resources, and services. (5,6)

3. Demonstrate knowledge and skills of Internet use and other resources consistent with acceptable use policies including the legal consequences of plagiarism and the need for authenticity in student work through an understanding of copyright issues. (5)

4. Demonstrate and advocate legal and ethical behaviors among peers, family, and community regarding the use of technology and information. (5)

5. Explain and use advanced terminology, tools, and concepts associated with software applications, telecommunications, and emerging technologies. (1,3)

6. Use technology tools and resources for managing and communicating personal/professional information (e.g., finances, schedules, addresses, purchases, correspondence). (1,3)

7. Refine knowledge and enhance skills in keyboarding, word processing, desktop publishing, spreadsheets, databases, multimedia, and telecommunications in preparing and presenting classroom projects. (3,6)

8. Collaborate (e.g., desktop conferencing, e-mail, on-line discussions) with peers, experts, and others to compile,

synthesize, produce and disseminate information, models, and other creative works. (1,2,3,5)

9. Evaluate technology-based options for lifelong learning. (4)

10. Use appropriate technology to locate, retrieve, organize, analyze, evaluate, and communicate information for problem solving and decision making. (1,2,4)

11. Evaluate the usage of technology and the processes involved during and upon completion of individual and group projects. (2,5)

a. Technology Communication Tools

b. Technology Problem Solving and Decision-Making Tools

c. Technology Productivity Tools

d. Technology Research Tools

e. Social, Ethical, and Human Issues

f. Basic Operations and Concepts

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

Interested persons may submit comments until 4:30 p.m., August 9, 2003, 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 104C Louisiana K-12 Educational Technology Standards**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The implementation of the revisions of the Louisiana K-12 Educational Technology Standards will cost the State Department of Education approximately \$3810 for preparing and disseminating these revisions.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collections of state or local government units.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is no effect on costs or economic benefits to directly affected persons or non-governmental groups.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There are no effects on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0306#072

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741C Louisiana Handbook for  
 School Administrators C 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 1:483 (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 remove outdated information.

**Title 28  
 EDUCATION**

**Part I. Board of Elementary and Secondary Education**

**Chapter 9. Bulletins, Regulations, and State Plans**

**Subchapter A. Bulletins and Regulations**

**§901. School Approval Standards and Regulations**

A. Bulletin 741

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 28:269 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:

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**The Louisiana School and District Accountability System  
 School Performance Scores**

**2.006.03** A School Performance Score (SPS) shall be calculated for each school. This score shall range from 0-100 and beyond, with a score of 100 indicating a school has reached the 10-Year Goal and a score of 150 indicating a school has reached the 20-Year Goal. The lowest score that a given school can receive for each individual indicator index and/or for the SPS as a whole is 0.

For schools entering accountability after 1999, one year's data shall be used for schools formed in mid-cycle years and two year's data for other schools.

New schools with one year of test data shall be included in accountability. For attendance and dropout data, LEA's shall have the option of using:

1. the district average for schools in the same category as the new school;
2. data from the prior year, if whole grade levels from an existing school or schools moved to the new school;

Any references to Supplemental Educational Services in this policy apply to Title I schools only.

Beginning in 2003, for schools that may be subject to choice and/or Supplemental Educational Services provisions, the LDE shall annually release preliminary School Performance Scores and Corrective Action status at least two weeks prior to the first day of the school year following the school year in which the assessment data was collected. Final School Performance Scores will be issued during the fall semester each year.

<b>Formula for Calculating an SPS [K-6]</b>			
All intermediate results and the final result shall be rounded to the nearest tenth.			
The SPS for a K-6 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example, [(66.0 * 60%) + (75.0 * 30%) + (50.0 * 10%)] = 67.1			
Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance	50.0	10%	5.0
SPS = 67.1			

<b>Criterion-Referenced Tests (CRT) Index Calculations</b>	
A school's CRT Index score equals the sum of the student totals divided by the number of students eligible to participate in state assessments times 4 (number of subjects). For the CRT Index, each student who scores within one of the following five levels shall receive the number of points indicated.	
Advanced =	200 points
Mastery (Exceeding the Standard) =	150 points
Basic (Meeting the Standard) =	100 points
Approaching Basic (Approaching the Standard) =	50 points
Unsatisfactory =	0 points

Option I students: those students failing the 8th grade LEAP 21 that have been

- retained on the 8th grade campus
- must retake all parts of the 8th Grade LEAP 21

If, during spring testing, a repeating fourth grade student or Option I 8th grade student receives a score of Approaching Basic (Approaching the Standard) or above on a LEAP 21 test of mathematics, English language arts, science or social studies for which he/she received a score of Unsatisfactory the previous spring, the retaining school shall receive 50 incentive points per subject in its accountability index. A student may earn a maximum of 200 incentive points for his/her school. (No incentive points will be awarded for passing parts of tests in the summer school of the year they first failed in spring testing.)

**Formula for Calculating a CRT Index for a K-8 School**

- Calculate the total number of points by multiplying the number of students at each performance level times by the points for those respective performance levels, for all content areas and summing those products.
- Add to the sum any Incentive Points and divide by the product of the total number of students eligible to be tested times the number of content area tests.
- Zero shall be the lowest CRT Index score reported for accountability calculations.

**Norm-Referenced Tests (NRT) Index Calculations [K-8]**

For the NRT Index, composite standard scores shall be used for computing the SPS. Index scores for each student shall be calculated, scores totaled, and then averaged to get a school's NRT Index score.

<b>NRT Goals and Equivalent Standard Scores</b>					
Composite Standard Scores Equivalent to Louisiana's 10- and 20-Year goals, by Grade Level *					
Grade					
Goals	Percentile Rank	3	5	6	7
10-Year Goal	55th	187	219	231	243
20-Year Goal	75th	199	236	251	266

**NRT Formulas Relating Student Standard Scores to NRT Index [K-8]**

Where the 10-year and 20-year goals are the 55th and 75th percentile ranks, respectively, and where SS = a student's composite standard score, then the index for that student is calculated as follows:

Grade 3:	Index 3rd grade = $(4.167 * SS) - 679.2$
Grade 5:	Index 5th grade = $(2.941 * SS) - 544.1$
Grade 6:	Index 6th grade = $(2.500 * SS) - 477.5$
Grade 7:	Index 7th grade = $(2.174 * SS) - 428.3$

**Formula for Calculating a School's NRT Index [K-8]**

- Calculate the index for each student, using the grade-appropriate formula relating the Standard Score to NRT Index. (NOTE: For accountability purposes, a student not taking the test and not exempted will be assigned a zero NRT index.)
- Sum the total number of NRT Index points for all grades in the school.
- Divide the sum of the NRT Index points by the total number of students eligible to be tested.

Zero shall be the lowest NRT Index score reported for School Performance Score calculations.

**Attendance Index Calculations [K-8]**

An Attendance Index score for each school shall be calculated using the prior two years' average attendance rates as compared to the State's goals.

	10-Year Goal	20-Year Goal
Grades K-8	95%	98%

**Attendance Index Formula Grades K-8**

Indicator (ATT K-8) =  $(16.667 * ATT) - 1483.4$

Where ATT is the attendance percentage, the Index Formula uses the definition of attendance established by the Louisiana Department of Education.

**Lowest Attendance Index Score**

Zero shall be the lowest Attendance Index score reported for accountability calculations.

**Dropout Index Calculations**

A Dropout Index score for each school shall be calculated using the prior two years' average dropout rates as compared to the State's goals.

	10-Year Goal	20-Year Goal
Grades 7 & 8	4%	2%

The national definition of dropout shall be adhered to, but in certain instances the Louisiana Department of Education shall calculate an "Adjusted Dropout Rate" for accountability purposes.

<b>Dropout Index Formulas</b>	
Non-Dropout Rate (NDO) = 100 - Dropout Rate (DO) (expressed as a percentage)	
Grades 7 & 8	Dropout Index (7-8) = Indicator (DO Gr 7-8) = (25 * NDO) - 2300.0 NDO = (Indicator DO Gr 7-8 + 2300.0) /25

**Lowest Dropout Index Score**  
Zero shall be the lowest Dropout Index score reported for accountability calculations.

<b>Formula for Calculating an SPS [K-8]</b>			
The SPS for a K-8 school shall be calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example, [(71.2 * 60%) + (76.1 * 30%) + (87.7 * 5%) + (90.4 * 5%)] = 74.4			
Indicator	Index Value	Weight	Indicator Score
CRT	71.2	60%	42.7
NRT	76.1	30%	22.8
Attendance	87.7	5%	4.4
Dropout	90.4	5%	4.5
SPS = 74.4			

### School Performance Scores for 9-12

<b>Formula for Calculating an SPS for 9-12 and Combination Schools.</b>			
The SPS for a 9-12 school shall be calculated by multiplying the index values for each indicator by the weight given to the indicator and adding the total scores. The formula is SPS = (.60 * CRT Adjusted Achievement Index) + (.30 * NRT Adjusted Achievement Index) + (.05 * Dropout Index) + (.05 * Attendance Index)			
All intermediate results and the final result shall be rounded to the nearest tenth. The following is an example of how this calculation shall be made:			
[(.60 * 66.0) + (.30 * 75.0) + (.05 * 50.0) + (.05 * 87.5)] = 69.0.			
Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance Index	50.0	5%	2.5
Dropout Index	87.5	5%	4.4
SPS = 69.0			

<b>Criterion-Referenced Tests (CRT) Index Calculations [9-12]</b>	
A high school's CRT Index score equals the sum of the student totals divided by the number of tests those students were eligible to take. For the CRT Index, each student who scores within one of the following five levels shall receive the number of points indicated.	
Advanced	200 points
Mastery (Exceeding the Standard)	150 points
Basic (Meeting the Standard)	100 points
Approaching Basic (Approaching the Standard)	50 points
Unsatisfactory	0 points

<b>Norm-Referenced Tests (NRT) Index Calculations [9-12]</b>		
For the NRT Index, composite standard scores shall be used for computing the SPS. Index scores for each student shall be calculated, scores totaled, and then averaged to get a high school's NRT Index score.		
NRT Goals and Equivalent Standard Scores for Grade 9		
Goal	Percentile Rank	Grade 9 Composite Standard Score
10-Year Goal	55th	263
20-Year Goal	75th	287

<b>NRT Formulas Relating Student Standard Scores to NRT Index [9-12]</b>
If the 10-Year and 20-Year Goals are the 55th and 75th percentile ranks respectively and if the SS = a student's composite standard score, the index for a grade 9 student is calculated as follows: Index 9th grade = (2.083 * SS) - 447.8

- Only with the exception of grade 8 Option II students, all Louisiana students in grades three through eleven will participate in only one of the following state assessments on an annual basis:
- LEAP 21 or,
  - GEE 21 or,
  - Iowa On-Level or,
  - LEAP Alternate Assessment B (LAA-B) or,
  - LEAP Alternate Assessment (LAA)

**Formula for Calculating the NRT and CRT Adjusted Achievement Index for a High School**

- 1) Sum the number of points earned by all students. For the NRT, there shall be one score for each student: the NRT Index calculated from the student's composite standard score. For the CRT, students shall be taking two tests at each grade.
- 2) Divide the sum by the total number of students eligible to be tested times the number of content area tests. This calculation provides the raw achievement index for the grade.
- 3) Multiply the raw index by the product of the non-dropout rates from the previous year for that grade and for all the previous grades. (See Examples below.) This operation means that the grade 9 NRT Index shall be multiplied by the grade 9 non-dropout rate + .07, the grade 10 CRT Index shall be multiplied by the grade 9 and grade 10 non-dropout rates + .07, and the grade 11 CRT Index shall be multiplied by the grade 9, grade 10 and grade 11 non-dropout rates + .07. Any Option II student who passes a previously failed portion of the CRT earns 50 Incentive Points for his/her high school. Add any Option II Incentive points to the NRT value after multiplying to adjust for dropouts. This operation shall yield the Adjusted Achievement Index.
- 4) Zero shall be the lowest NRT or CRT Adjusted Achievement Index score reported for accountability calculations.

The formula for calculating the NRT and CRT Adjusted Achievement Index for a High School is: NRT Adjusted Achievement Index = Raw Achievement Index \* (1-DO Gr 9 + .07)

CRT Adjusted Achievement Index (Gr 10) = Raw Achievement Index \* (1-DO Gr 9 + .07) \* (1-DO Gr 10 + .07)

CRT Adjusted Achievement Index (Gr 11) = Raw Achievement Index \* (1-DO Gr 9 + .07) \* (1-DO Gr 10 + .07) \* (1-DO Gr 11 + .07)

Example 1 – Grade 9:

- Before beginning grade 9, a class has 50 students; by the end of September, 45 remain in the class. The grade 9 dropout rate is  
 $(5/50) = .100.$
- The number of points earned on the NRT is 5000.
- The raw achievement index is  
 $5000/45 = 111.1.$
- The adjusted achievement index is  
 $111.1 \times (1 - .100 + .07) = 107.8.$

Example 2 – Grade 10:

- Another 5 students dropout before October of grade 10. The grade 10 dropout rate is  
 $5/45 = .111.$
- The 40 students remaining in the class earn 10,000 points on the two CRT tests. The raw achievement index is  
 $10,000/(40 * 2) = 125.0.$
- The adjusted achievement index is  
 $125.0 \times (1 - .100 + .07) \times (1 - .111 + .07) = 116.3.$

**Attendance Index Calculations for Grades 9-12**

An Attendance Index score for each high school shall be calculated using the prior two years' average attendance rates as compared to the State's goals.

	10-Year Goal	20-Year Goal
Grades 9-12	93%	96%

**Attendance Index Formula for Grades 9-12**

If the 10-Year and 20-Year Goals are 93% and 96% average attendance respectively and if the ATT = attendance percentage using the definition of attendance established by the Department of Education, the attendance index is calculated as follows:

$$\text{Indicator (ATT 9-12)} = (16.667 * \text{ATT}) - 1450.0.$$

Example:

- If the average attendance percentage is 94.3%, the Attendance Index would be  
 $(16.667 * 94.3) - 1450.0 = 121.7.$

Zero shall be the lowest Attendance Index score reported for accountability calculations.

**Dropout Index Calculations for Grades 9-12**

A Dropout Index score for each high school shall be calculated using the prior two years' average dropout rates as compared to the State's goals.

	10-Year Goal	20-Year Goal
Grades 9-12	7%	3%

**Dropout Index Formula for Grades 9-12**

$$\text{Dropout Index} = 187.5 - (12.5 \times \text{dropout rate})$$

Example:

If the dropout rate is 4.5%, the Dropout Index would be  $187.5 - (12.5 * 4.5) = 131.3.$

Zero shall be the lowest Dropout Index score reported for accountability calculations.

The national definition of dropout shall be adhered to, but in certain instances the Louisiana Department of Education shall calculate an "Adjusted Dropout Rate" for accountability purposes.

**School Performance Scores for Combination Schools**

Combination Schools are schools that contain a 10<sup>th</sup> and/or 11<sup>th</sup> grade and that also contain a 4<sup>th</sup> and/or 8<sup>th</sup> grade.

The formula for calculating an SPS for Combination Schools is defined in the High School calculations.

**Formula for Calculating a CRT Index for a Combination School**

1. Calculate the CRT Index score for the K-8 portion of the school as instructed above in the K-8 directions.
2. Calculate the CRT Adjusted Index score for the 9-12 portion of the school as instructed above in the 9-12 directions.
3. Multiply the K-8 CRT Index by the number of students eligible to take the K-8 CRT times 4 (number of subjects). Multiply the 9-12 CRT Adjusted Index by the number of tests 9-12 students were eligible to take.
4. Sum the two products in step 3.
5. Divide the sum in step 4 by the sum of tests all students (K-12) were eligible to take.

$$\frac{[(K-8 \text{ CRT Index} * \text{number students eligible to test} * 4) + (9-12 \text{ CRT Adjusted Index} * \text{number of tests students were eligible to take})]}{\text{Total of tests K-12 students were eligible to take.}}$$

**Formula for Calculating a NRT Index for a Combination School**

1. Calculate the NRT Index score for the K-8 portion of the school as instructed above in the K-8 directions.
2. Calculate the NRT Adjusted Index score for the 9-12 portion of the school as instructed above in the 9-12 directions.
3. Multiply the K-8 NRT Index by the number of students eligible to take the K-8 NRT. Multiply the 9-12 NRT Adjusted Index by the number of 9-12 students eligible to take the NRT. Sum the two products. Divide the sum by the number of K-12 students eligible to take the NRT.

$$\frac{[(K-8 \text{ NRT Index} * \text{number students eligible to test}) + (9-12 \text{ NRT Adjusted Index} * \text{number of students eligible to test})]}{\text{Total K-12 students eligible to test.}}$$

**Formula for Calculating an Attendance Index for a Combination School**

1. Calculate the Attendance Index for the K-8 portion of the school as instructed above in the K-8 directions.
2. Calculate the Attendance Index for the 9-12 portion of the school as instructed above in the 9-12 directions.
3. Multiply the K-8 Attendance Index by the K-8 enrollment total. Multiply the 9-12 Attendance Index by the 9-12 enrollment total. Sum the two products. Divide the sum by the number of K-12 students enrolled in the school.

$$\frac{[(K-8 \text{ Attendance Index} * \text{number of K-8 students}) + (9-12 \text{ Attendance Index} * \text{number of 9-12 students})]}{\text{Total K-12 enrollment.}}$$

**Formula for Calculating a Dropout Index for a Combination School**

1. Calculate the Dropout Index for the K-8 portion of the school as instructed above in the K-8 directions.
2. Calculate the Dropout Index for the 9-12 portion of the school as instructed above in the 9-12 directions.
3. Multiply the K-8 Dropout Index by the 7-8 enrollment total. Multiply the 9-12 Dropout Index by the 9-12 enrollment total. Sum the two products. Divide the sum by the number of 7-12 students enrolled in the school.

$$\frac{[(K-8 \text{ Dropout Index} * \text{number of 7-8 students}) + (9-12 \text{ Dropout Index} * \text{number of 9-12 students})]}{\text{Total 7-12 enrollment.}}$$

**2.006.05** Growth Targets Each school shall receive a Growth Target that represents the amount of progress it must

make every two years to reach the state's 10- and 20-year goals.

In establishing each school's Growth Target, the SPS inclusive of students with disabilities shall be used as the baseline. (See Standard 2.006.18.) However, the percentage of students with disabilities varies significantly across schools and the rate of growth for such students, when compared to regular education students, may be different. Therefore, the proportion of students with disabilities eligible to participate in the CRT or NRT in each school will be a factor in determining the Growth Target for each school.

**Growth Targets [K-12]**

During the first ten years, the formula is the following:  

$$[\text{PropRE} * (100 - \text{SPS})/N] + [\text{PropSE} * ((100 - \text{SPS})/(N + 5))] + [\text{PropLEP} * ((100-\text{SPS})/(N+5))] \text{ or } 5 \text{ points, whichever is greater}$$

where

PropSE = the number of special education students in the school who are eligible to participate in the NRT or CRT, divided by the total number of students in the school who are eligible to participate in the NRT or CRT.

For purposes of this calculation, gifted, talented, and 504 students shall not be counted as special education students, but shall be included in the calculations as regular education students.

PropRE = 1 - PropSE. PropRE is the proportion of students not in special education.

PropLEP = the number of limited English proficient students in the school who are eligible to participate in the NRT or CRT, divided by the total number of students in the school who are eligible to participate in the NRT or CRT. A limited English proficient student shall be defined as an individual who has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny such individual the opportunity to learn successfully in classrooms where the language of instruction is English or participate fully in our society and who 1) was not born in the United States or whose native language is a language other than English and comes from an environment where a language other than English is dominant; or 2) is a Native American or Alaska Native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency; or 3) is migratory and whose native language is other than English and comes from an environment where a language other than English is dominant.

SPS = School Performance Score

N = Number of remaining accountability cycles in the 10-Year Goal period

The maximum amount of growth that a school shall be required to attain is 20 points. The minimum amount of growth required shall be 5 points.



During the second ten years, the formula is the following:  
[PropRE \* (150 - SPS)/N] + [PropSE \* ((150 - SPS)/(N + 5))] + [PropLEP \* ((150-SPS)/(N+5))], or 5 points, whichever is greater.

For combination schools, the Louisiana Department of Education shall use 2 years of data (2002 and 2003) to determine if a school has met its growth target for cycle 1. Combination schools shall use the following formula to calculate a growth target:

$$[[\text{PropRE} * (100 - \text{SPS})/N] + [\text{PropSE} * ((100 - \text{SPS})/(N + 5))] + [\text{PropLEP} * ((100-SPS)/(N+5))], \text{ or } 5 \text{ points, whichever is greater.}$$

#### **Growth Targets for New or Reconfigured Schools**

Once a baseline for the new or reconfigured school has been established, a Growth Target shall be set based on the number of cycles remaining until 2009 (K-8) and 2011 (9-12), with a maximum Growth Target of 20 points.

For example, suppose an elementary school enters the Accountability System in 2003 and establishes a baseline SPS of 50 in 2005. Normally, the school's Growth Target would be  $(100-50)/2 = 25$ . Under this rule, the school's Growth Target shall be 20, the maximum.

#### **Growth Targets for Reconstituted Schools**

Until 2009 (for K-8 schools) and 2011 (for 9-12 schools), the reconstituted school's Growth Target shall be equal to 100 minus the SPS divided by 5 minus the number of cycles since reconstitution.

For example, suppose a school is reconstituted in 2005 and has a SPS of 50 (based on previous year's data). The school's Growth Target for the first cycle after reconstitution shall be 10 points  $[(100-50)/5]$ .

#### **Rewards/Recognition**

**2.006.08** A school shall receive recognition and monetary awards (as appropriated by the Legislature) when

it meets or surpasses its Growth Target and when it shows growth in the performance of its subgroups

School personnel shall decide how any monetary awards shall be spent; however, possible monetary rewards shall not be used for salaries or stipends. Other forms of recognition shall also be provided for a school that meets or exceeds its Growth Target.

Districts and the LDE shall evaluate any instance of Irregularity or Unusual Data (See Standard 2.006.04) in the following respects for determining the allocation of rewards:

- If Irregularities are resolved and the data is corrected before rewards are provided, then the rewards will be based upon the corrected data.
- If the Irregularities are resolved and the data is corrected after rewards have been distributed, then the school shall be required to repay any rewards for which it was ineligible as determined by the audit findings or the SBESE will subtract the reward amount from future funds to be awarded to the district or from some other source.

#### **Pairing/Sharing of Schools with Insufficient Test Data**

**2.006.15** In order to receive a SPS, a given school must have at least one grade level of CRT testing and at least one grade level of NRT testing. A school that does not meet this

requirement must be either "paired or shared" with another school in the district as described below. For the purpose of the Louisiana Accountability System, such a school shall be defined as a "non-standard school."

A school with a grade-level configuration such that it participates in neither the CRT nor the NRT (e.g., a K, K-1, K-2 school) must be "paired" with another school that has at least one grade level of CRT testing and one grade level of NRT testing. This pairing means that a single SPS shall be calculated for both schools by averaging both schools' attendance and/or dropout data and using the test score data derived from the school that has at least two grade levels of testing.

A school with a grade-level configuration in which students participate in either CRT or NRT testing, but not both (e.g., a K-3, 5-6 school) must "share" with another school that has at least one grade level of the type of testing missing. Both schools shall "share" the missing grade level of test data. This shared test data must come from the grade level closest to the last grade level in the non-standard school. The non-standard school's SPS shall be calculated by using the school's own attendance, dropout, and testing data AND the test scores for just one grade from the other school.

A district must identify the school where each of its non-standard schools shall be either "paired or shared." The "paired or shared" school must be the one that receives by promotion the largest percentage of students from the non-standard school. In other words, the "paired or shared" school must be the school into which the largest percentage of students "feed." If two schools receive an identical percentage of students from a non-standard school, the district shall select the "paired or shared" school.

If a school is not paired/shared at the beginning of a cycle, it shall not be paired/shared at the end of a cycle.

Beginning with Cycle 2, requirements for the number of test units shall be the sum of the test units over a two-year period (80 CRT and 20 NRT) (not the number of test units in one year). Beginning with Cycle 2, a school's sharing/pairing status at the beginning of the cycle shall be its status at the end of the cycle.

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Interested persons may submit written comments until 4:30 p.m., August 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 741C Louisiana Handbook for  
School 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 remove outdated information.
- 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 directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no effect on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
0306#070

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 Validity, Reinstatement, Renewal, and Extension of 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 746C Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy adds language for the new Level 1, Level 2, and Level 3 certificates; and it provides specificity to the six semester hours of coursework required for reinstatement of lapsed certificates.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans  
Subchapter A. Bulletins and Regulations**

**§903. Teacher Certification Standards and Regulations  
A. Bulletin 746**

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:763-765 (April 2002), LR 28:765 (April 2002), LR 28:990 (May 2002), LR 29:

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**Validity, Reinstatement, Renewal, and  
Extension of Certificates**

Type C and Level 1 certificates for beginning teachers in Louisiana shall be valid for three years. Teachers who have had the required academic preparation and the necessary number of years of successful teaching experience in their properly certified field and have successfully completed the Louisiana Teacher Assistance and Assessment program may have Type C certificates converted into Type B or Type A certificates, or may have Level 1 certificates converted into Level 2 or Level 3 certificates, with validation subject to the terms and conditions hereinafter set forth.

Type B and A certificates shall be valid for life; and Level 2 and Level 3 certificates shall be valid for five years and renewable with 150 Continuing Learning Units (CLUs) of professional development. The period of validity is subject to the provision that the holder does not allow any period of five or more consecutive calendar years of disuse to accrue and/or the certificate is not revoked by the State Board of Elementary and Secondary Education acting in accordance with law. Type B, Type A, Level 2, and Level 3 certificates shall lapse for disuse if the holder thereof shall allow a period of five consecutive calendar years to pass in which he or she is not a regularly employed teacher for at least one semester (90 consecutive days).

Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by Certification and Higher Education or a Louisiana dean of education for the first period of five consecutive years of disuse.

It is the responsibility of the parish employing authority to notify Certification and Higher Education when the employing authority desires to employ a teacher whose Type C, B, or A certificate or whose Level 1, 2, or 3 certificate has expired.

Upon recommendation of the parish superintendent (or corresponding administrative officer of a private school system) who wishes to employ such a teacher, the holder of a lapsed Type C or Level 1 certificate may have the certificate renewed once for an additional period of three years, subject to the approval of Certification and Higher Education or upon the presentation of six semester hours of credit directly related to the area(s) of certification. Such hours shall be resident, extension, or correspondence credit from a regionally accredited institution approved by Certification and Higher Education or a Louisiana dean of education. However, if the holder of a Type C or Level 1 certificate has not been employed regularly as a teacher for at least one 90-day semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of six semester hours of credit directly related to area(s) of certification. The coursework may be resident,

extension, or correspondence credits earned from a regionally accredited institution approved by Certification and Higher Education or a Louisiana dean of education. The six semester hours of resident, extension, or correspondence credit required to reinstate a certificate must be earned

during the five-year period immediately preceding the reinstatement of the certificate. Type of approved coursework for grade levels of certification and for special education areas is as follows.

Approved Courses to Reinstate Lapsed Certificates (Six semester hours of coursework required)						
Type of Approved Coursework	Early Childhood (PK, K, PK-3)	Elementary Grades (1-4, 1-6, 1-8)	Middle Grades (4-8, 5-8)	Secondary Grades (7-12)	Special Education (1-12)	All-Level (K-12) Areas (Art, Dance, Foreign Language, H&PE, Music)
(Diagnostic & Prescriptive Reading)	X	X	X	X	X	
Reading in the Content Area	X	X	X	X	X	
Other Content in Reading	X	X	X	X	X	X
Early Numeracy Concepts of Mathematics	X	X	X		X	
Other Content in Mathematics	X	X	X		X	
Content in English/ Language Arts	X	X	X		X	
Content in Science	X	X	X		X	
Content in Social Studies	X	X	X		X	
Content Specific to Subject Area of Certification			X	X	X	X
Classroom and/ or Behavior Management	X	X	X	X	X	X
Technology in the Classroom	X	X	X	X	X	X
Teaching in an Inclusive Setting	X	X	X	X	X	X
Vocational and Transition Services for Students					X	

Notes:

1. Teachers with multiple certification areas may complete coursework specific to any of their certification areas.
2. Coursework must be reflected on a transcript from a regionally accredited institution.
3. Coursework must be gained within the five-year period immediately preceding reinstatement of the certificate.
4. Coursework cannot be a repeat of prior coursework shown on a transcript, unless the student failed or earned a "D" in the course.

\* \* \*

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

Please respond to the following.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., August 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 746C Louisiana Standards for State Certification of School Personnel Validity, Reinstatement, Renewal, and Extension of Certificates**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
 

This policy adds language for the new Level 1, Level 2, and Level 3 certificates; and it provides specificity to the six semester hours of coursework required for reinstatement of lapsed certificates. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0306#071

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 1196C Louisiana Food and Nutrition Programs Policies of Operation (LAC 28:XLIX)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1196C Louisiana Food and Nutrition Programs, Policies of Operation*. Bulletin 1196 is the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Child Nutrition Programs in Louisiana. This is an update of Federal and State policies.

**Title 28  
EDUCATION**

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

**Chapter 1. Administration**

**§107. Local Level**

A. - A.1. ...

B. School Food Service Director and/or Supervisor

1. This person is responsible to the superintendent or the sponsor's representative. As a member of the administrative staff, the director and/or supervisor has overall responsibility for the CNP. This individual shall act as advisor for the other staff members, school principals and faculties, food service managers, students and parents in developing, administering and supervising the programs. It is his/her responsibility to exercise guidance and leadership while maintaining necessary controls over accounting and reporting, personnel, facilities and equipment. Each school/site shall be monitored by a director/supervisor in accordance with Federal and State regulations. (Refer to Forms and Guidance materials.) The significance of improved food habits and educational experiences makes it imperative that a CNP be based upon professional concepts. Each school system shall employ a certified supervisor or director. (Refer to §1103)

C. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2100 (December 2001), amended LR 29:

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

A. ...

B. Reimbursement payments may be made only to schools operating under an agreement between the sponsor and LDOE. The Agreement shall be signed by the Sponsor's designated authorized representative. The Agreement will be considered permanent unless the State Agency is notified of a change in the School Food Authority (SFA) authorized representative. The Agreement may be terminated by either party or may be canceled at any time by the State Agency upon evidence that terms of the agreement have not been fully met.

C.1. - C.2.a. ...

3. Competitive Foods/Extra Sales

a. Each school shall abide by the State policy regarding the operation of competitive food services. The competitive foods policy and penalties for policy violations are discussed in §741. Selling of extra items shall be in compliance with State policy. (Refer to §737).

4. - 7.a. ...

8. Meal Charges

a. Meal charges including student, adult, and at-cost shall be posted in a prominent location in each school food service dining room. All persons consuming meals who are not eligible for free meals shall pay directly to the sponsor the cost posted. No student shall be requested to pay more than the actual cost of the lunch, breakfast, and/or snack, less the amount of reimbursement paid to the sponsor from Federal funds. The minimum charge to eligible adults shall comply with Federal and State regulations. (Refer to §729.)

9. - 24.a. ...

25. Contract Meals

a. The Sponsor agrees to submit annually, with the free and reduced documents, a copy of the contract when contract meals are provided. (Refer to §729)

26. - 26.a. ...

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

HISTORICAL NOTE Promulgated by the Board of Elementary and Secondary Education in LR 27:2102 (December 2001), amended LR 29:

**Chapter 3. Financial Management and Accounting**

**§313. Special Functions/Catering**

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

c. Separate accounting records must be maintained for catered events. These records shall document all purchases and expenditures. All accounting practices must follow guidelines outlined in *Bulletin 1929C Louisiana Accounting and Uniform Governmental Handbook*. (For more information and requirements, refer to Chapter 7:§731 and §733.)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2106 (December 2001), amended LR 29:

**§317. Allowable/Unallowable Program Expenses**

A. - B.2.a. ...

b. If food is stolen, a police report must be maintained on file for audit purposes. Expenses for food stolen are considered allowable costs only when a police report has been made.

3. - 3.c. ...

d. Initial equipment is the equipment that a Sponsor is required to have to begin a school food service program. The replacement of worn-out initial equipment or the purchase of additional equipment is an allowable expense. (Refer to Chapter 13 for guidance on required initial equipment.)

3.e. - 28.a. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2107 (December 2001), amended LR 29:

### **§323. Property Management Requirements**

A. - D.1.a.ii. ...

- iii. green beans, frozen, cut, 2# box; and
- iv. green beans, frozen, cut, 20# box.

b. - e. ...

2. To maintain a computerized noncosted perpetual inventory, adhere to the procedures listed below.

- a. Complete a computer inventory record for each form and pack of each food item in inventory.
- b. As items are received, enter the date and number of single units received into the computer record.
- c. As items are issued or withdrawn from inventory, enter the date and number of single items issued or withdrawn into the computer record.
- d. At the end of the month, compare the perpetual inventory balance of each food item to the counts obtained from the physical inventory. (Refer to "Noncosted Physical Inventory" in this Section for procedures to reconcile inventories.)

E. - E.2.e. ...

3. To maintain a computerized costed perpetual inventory, adhere to the procedures listed below.

- a. Complete a computer inventory record for each form and pack of each food item in inventory.
- b. As items are received, enter the date and number of single units received and price per unit into the computer record.
- c. As items are issued or withdrawn from inventory, enter the date and number of single items issued or withdrawn into the computer record.
- d. At the end of the month, compare the perpetual inventory balance of each food item to the counts obtained from the physical inventory. (Refer to "Noncosted Physical Inventory" in this Section for procedures to reconcile inventories.)

F. Cost of Food Used

1. The cost of food used each month is calculated from the value of costed inventories for all schools. The SFA has the option of costing either the physical or the perpetual inventories in order to determine the dollar value of the ending inventories.

2. At the end of the month, the cost of food used at each school for the month is calculated from the value of the beginning inventory plus the value of foods received, plus/minus any inventory adjustments and/or transfers, minus the ending inventory. The cost of food used is then adjusted to reflect the value of the inventory error from the previous month, if applicable. The State Agency provides a copy of The Cost of Food Used Worksheet. At the end of

each fiscal year, the cost of food used for all schools is consolidated and reported on the District Income and Expense Report.

3. If the Cost of Food Used Worksheet is computer generated, it should capture all of the information that is on the Cost of Food Used Worksheet provided by the State agency.

G. Property Management of Equipment

1. Adequate maintenance procedures shall be implemented to keep equipment in good condition.

2. Property records shall be maintained accurately. Records for each item of equipment with a unit acquisition cost of \$1,000 or more, with a useful life of one year or more, and purchased in whole or in part with school food service funds shall include the items listed below:

- a. a description of the equipment including manufacturer's serial number;
- b. an identification number, such as a school food service tag number or the manufacturer's serial number;
- c. the acquisition date and unit acquisition cost;
- d. the source of funding;
- e. the location, use, and condition of the equipment, and the date the information was reported; and
- f. all pertinent information on the ultimate transfer, replacement or disposal, including disposal date and sale price.

3. Every year a physical inventory of school food service equipment with a unit acquisition cost of \$1,000 or more with a useful life of one year or more shall be conducted and the results reconciled with the property records to verify the existence, utilization, and continued need. Any discrepancies between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

4. Adequate safeguards to prevent loss, damage, or theft of equipment shall be used. Any loss, damage, or theft of equipment shall be investigated and fully documented. The State Agency may require a report of the circumstances.

H. Disposition of Equipment

1. The SFA may trade in existing equipment when acquiring replacement equipment.

2. Equipment that is antiquated or not useable shall be disposed of in the following manner. (This procedure may also be used when a SFA ceases to participate in the NSLP or SBP.)

a. The SFA shall actively seek to recover the highest possible return on equipment that is in good operating condition. Selling procedures shall be established to provide for adequate competition and for the highest possible return. To ensure maximum competition, the SFA shall publicly advertise and sell them to the highest bidder. All income shall be deposited in the school food service account.

b. If the SFA is unable to sell used equipment, efforts should be made to transfer the equipment to:

- i. projects or programs supported by other Federal grants or assistance agreements; or
- ii. other programs that provide meals to children.

c. When unable to sell or transfer inoperable or used equipment, the SFA should attempt to sell the equipment to buyers of scrap materials following procedures

that will provide maximum competition and result in the highest possible return to the school food service program.

d. If efforts to sell or transfer used equipment fail, the SFA may use school food service funds to have the equipment removed from school food service facilities and transported to the nearest legal disposal site.

3. For the disposal of equipment during bankruptcy proceedings, the SFA shall contact the Division of Nutrition Assistance.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2111 (December 2001), amended LR 29:

### **§335. Computing Average Meal Cost**

A. - B.1.c. ...

d. If the school system sold extra food items, calculate the meal equivalents allowed for extra sales by dividing the total income from extra sales for the year by the meal equivalent factor. (Refer to §339, Meal Equivalent Factor.)

B.1.e. - C.1. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2114 (December 2001), amended LR 29:

### **§337. Establishing Meal/Snack Charges and Extra Sales Prices**

A. - A.1.h. ...

i. Under-collections for the sale of meals and snacks will necessitate an audit exception; furthermore, any under-collection must be recovered from other sources and deposited in the school food service account. Although non sufficient funds (NSF) checks given to cover the cost of student meals are considered a part of the total cost of producing meals, each SFA must establish a policy regarding the handling of NSF checks. The system should limit the number of NSF checks a household may issue before requiring payment by cash or money order. When the bank returns an NSF check, the household should be required to pay, in cash, the amount of the check and the bank handling charge. When a tuition fee in nonpublic schools includes the costs of school lunch, breakfast, snack or milk, these funds shall be collected and deposited to the school food service account as received.

i - i.iv. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2114 (December 2001), amended LR 29:

### **§339. Meal Equivalent Factor**

A. - B. ...

C. The meal equivalent factor is established annually and is reported at the end of each fiscal year on the District Income and Expense Report. The meal equivalent factor will be used to convert the revenue received from extra items sold into meal equivalents. To calculate meal equivalents for the year, divide the total income from extra sales for the year by the meal equivalent factor.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2116 (December 2001), amended LR 29:

### **§341. Claim for Reimbursement**

A. ...

B. Reimbursement Procedures

1. Federal Reimbursement for meals served to eligible students shall be paid at the current assigned rates and shall be paid only for lunches, breakfasts, and snacks meeting requirements. Reimbursement shall be made for only one lunch, breakfast, and snack served per child per day and cannot be made for any meals served to adults.

B.2. - I.5.a. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2116 (December 2001), amended LR 29:

### **§349. Recordkeeping for RCCIs and Boarding Schools**

A. - B.10.a. ...

11. Internal Control

a. Effective control over and accountability for all program funds, and for real and personal property assets shall be maintained. RCCIs and boarding schools shall adequately safeguard all such assets and shall ensure that they are used solely for authorized program purposes. (Refer to §331 for more information.)

12. - 12.a. ...

b. If a participating RCCI or boarding school has Federal expenditures of less than \$300,000 in a fiscal year, it shall annually report this information to the Louisiana Department of Education, to ensure compliance with Federal audit requirements.

c. Circular A-133 Subpart A §105 defines recipient or subrecipient. The main criteria for determining if an RCCI or boarding school is a recipient or a subrecipient of Federal funds is compliance with Federal program requirements as a criteria of receiving and expending the Federal funds.

13. - 14.a. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2120 (December 2001), amended LR 28:1737 (August 2002), LR 29:

## **Chapter 5. Free and Reduced Price Meals**

### **§501. Purpose**

A. School Food Authorities (SFA) participating in the National School Lunch and School Breakfast programs and utilizing commodities are required to serve free and reduced price meals to students determined eligible by the current Income Eligibility Guidelines.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2121 (December 2001), amended LR 29:

### **§503. Policy Statement**

A. - A.1.a. ...

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

c. the free/reduced price meal application form with instructions (Single or Multi-child application);

- d. the Letter to Households regarding application for benefits;
- e. - f. ...
- g. the Collection Procedure and Accountability Statement;
- h. ...
- i. the Notice of Selection for Verification and other forms of supporting documentation to assist in verification which include the following:
  - i. - v. ...
  - vi. Repealed.
  - 1.j. - 2.k.i. ...

ii. If no other income is listed, a multi-child application that lists a valid food stamp/FITAP case number should be approved free for all students listed on the application. If a higher income is listed that would change the eligibility status of the other children, then the SFA must investigate before making an eligibility determination for those children. Parent(s) or guardian(s) will be promptly notified of the acceptance or denial of their application(s).

A.2.k.iii. - B.2.g. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2121 (December 2001), amended LR 29:

**§505. Application Process**

A. - B.3.a. ...

C. Application Approval Deadline

1. The application process must be completed no later than 30 operating days from the first day of school. This process includes the distribution of applications and letters to the parent, the return of the application, eligibility determination, and notification to the parent. Within this timeframe, applications should be reviewed and parents notified of the eligibility determination as soon as possible, but no later than 10 operating days after receipt of the application.

D. - D.3.f.i. ...

ii. SFAs should review eligibility determinations made under these crisis procedures every 30 days to evaluate the household's circumstances.

D.3.g. - Q.2. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2124 (December 2001), amended LR 29:

**§513. Verification Process for School Meals**

A. - D.1. ...

a. Focused Sampling. The focused sampling method requires the verification of the lesser of 1 percent or 1,000 of the total approved applications (both income and categorical), selected from the approved applications with income information, plus the lesser of 0.005 percent or 500 of approved categorically eligible applications with food stamp/FITAP case numbers reported.

D.1.b. - F.2.b. ...

3. Income Eligible Sample

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

i. For applications that provide income information, the sample size is 1 percent of total approved

applications on file or 1,000 applications, whichever is less: e.g., total applications x 0.01.

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

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

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

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

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

4. Categorically Eligible Sample

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

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

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

G. Random Sample Selection Process

1. The random sample size is 3 percent of all approved applications on file on October 31 or 3,000 applications, whichever is less. To calculate the minimum required sample size, multiply the total number of approved applications, including both income and categorical applications, by 0.03. At least one application must be verified.

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

H. Household Notification

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

- a. the notice of selection for verification;
- b. notification of the types of acceptable information that can be provided to confirm income include such documents as pay stubs, award letters from welfare

Food Stamp and FITAP departments and social security offices, and support payment decrees from courts;

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2130 (December 2001), amended LR 29:

#### **§517. Confirmation of Eligibility Based on Income Eligibility**

A. - A.1. ...

2. The household must submit the social security numbers of all adult household members and written evidence of current income. (Refer to §523, Appendix B.) Review the income document(s) for the name, date and amounts stated to determine whether the information provided is sufficient to determine total current income.

A.3. - C.1. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2132 (December 2001), amended LR 29:

#### **§521. Completion of Verification**

A. - B.1.c. ...

d. Termination of Benefits. Households that do not cooperate with verification efforts or whose current income does not support eligibility for either free or reduced price meals must be changed as outlined in §521.C, Notification of Adverse Action, below.

B.2. - G.3. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2132 (December 2001), amended LR 29:

### **Chapter 7. Meal Planning and Service**

#### **§701. General**

A. ...

B. SFAs shall ensure that schools provide to children meals that meet the USDA School Meals Initiative for Healthy Children's nutrition goals. The nutritional goal of school lunches, when averaged over one week, is to provide one-third of the RDA for protein, calcium, iron, vitamin A, and vitamin C in the applicable age or grade groups as well

as the energy allowances based on the appropriate age or grade groups and meal patterns listed in Appendices A, B and C of this Chapter. Breakfast should provide one-fourth of students' RDA for protein, calcium, iron, vitamin A, and vitamin C in the applicable age or grade groups as the energy allowances based on the appropriate age or grade groups and meal patterns listed in Appendices A, B, and C of this chapter. Lastly, school lunches shall follow the recommendations of the 1990 Dietary Guidelines for Americans with emphasis on limiting total fat to 30 percent based on the actual number of calories offered, limiting saturated fat to 10 percent based on the actual number of calories offered, reducing the levels of sodium and cholesterol and increasing the level of dietary fiber.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2135 (December 2001), amended LR 29:

#### **§703. Nutrient Standard**

A. - B.8. ...

C. Required and Optional Nutrient Standards are included in §755, Appendices.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2136 (December 2001), amended LR 29:

#### **§709. Required Documents for Meal Planning Options**

A. - A.2.b.xiv. ...

c. Additional nutrients or components may be given and can be included in the nutrient analysis. A sample is in the Supplement.

2.d. - 3.b.iv. ...

c. The CN label should not be confused with Nutrition Facts labels, nutrient analyses, or product formulation statements. A sample of a CN label can be found in §755.E.

3.d. - 4.b. ...

c. A product formulation statement may be used in lieu of a CN label but, unlike the CN label, it does not carry a USDA warranty against losing reimbursement should there be an error. Therefore, SFAs must carefully review the statement to determine the accuracy of the information given prior to purchasing the product. Should a Federal or State review find that the product did not meet meal requirements, an audit exception may be taken. (Refer to the guidance for Reviewing Product Formulation Statement in §755.F., and the sample form in §755.G.)

5. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2136 (December 2001), amended LR 29:

#### **§711. Menu Planning Options**

A. - C. ...

D. Repealed.

E. - E.1.e. ...

i. To meet the requirements of the National School Lunch/School Breakfast Programs, school meals must contain a specified quantity of each of the food components as described below. The quantities or serving



sizes for these components vary according to the age/grade group of the students being served. (Refer to the Traditional School Lunch/Breakfast Pattern charts, §755. H. and I. Note that the charts specify required minimum quantities for different age/grade groups.) Schools are encouraged, but not required, to vary portion sizes by age/grade groups; however, if a school chooses not to vary portion sizes, each group must receive at least the minimum quantities required for that group. In other words, for a given group of students, a school may serve more than the minimum quantity, but not less. In addition to the required food components, larger servings and other foods may need to be served to increase the nutritional quality and acceptability of the meal.

(a). - (a).(i). ...

(ii). The quantity of meat or meat alternate shall be the quantity of the edible portion as served. To be counted as meeting this requirement, the meat or meat alternate shall be served in a main dish or in a main dish and only one other menu item: that is, two menu items are the maximum number that may be used to meet the meat/meat alternate requirement. When two menu items are used, the combination must total the minimum quantity required and the items should be merchandised together and served as a single item: for example, a soup and sandwich combo may be offered as a menu combination. (Refer to the Traditional School Lunch/Breakfast Pattern charts, §755.H. and I, for quantity requirements by age/grade groups.)

(a).(iii). - (b).(iii). ...

(iv). Generally, most vegetables and fruits that are to be used are listed in the USDA Food Buying Guide. In some situations, the main dish may have a CN label that documents the Fruit/Vegetable contribution. In situations when neither is the case, a certified product formation statement on the product from the manufacturer yield information on the product must be maintained on file in the SFA to indicate the contribution toward the meal requirements.

(c). - (c).(iii). ...

(iv). Snack type items such as hard pretzels and chips made from enriched or whole-grain meal or flour as well as bran and/or germ may be credited. (Refer to the Grains/Breads for Food Based Menu Planning chart in §755.J. for specific food item and serving size requirements.)

(v). Enriched macaroni products with fortified protein may be used to meet the grains/breads requirement or to meet a part of the meat/meat alternate requirement but not both in the same meal. (Refer to §711.E.1.e.(i).(a).(viii).[1], Meat/Meat Alternate, Enriched Macaroni With Fortified Protein.)

(vi). The criteria listed below are used as the bases for crediting items to meet the grains/breads requirement. (For specific food item and serving size requirements, refer to §755.J, Grains/Breads for Food Based Menu Planning chart.)

[1]. - [2]. ...

[3]. The item must be provided in quantities specified in the regulations and in minimum serving sizes as specified in the Grains/Breads for Food Based Menu Planning chart in §755.J.

(d). Milk

(i). Schools are required to offer fluid milk at breakfast and lunch. All milk served shall be pasteurized fluid types of milk that meet State and local standards. Whole and unflavored lowfat milk should be offered. Lowfat milk is defined by the Food and Drug Administration (FDA) as milk that contains no more than 3 grams of fat per 8 fluid ounce serving.

e.i.(d).(ii). - f.ii. ...

(a). Lunch

(i). Students must be offered all five required food items at lunch. The serving size of each of the five food items must equal the minimum quantities as specified in the Traditional School Lunch Pattern chart in §755.H. Two separate vegetable/fruit food items must be offered. The combined serving size of these items must total the required minimum quantity by age/grade group for the vegetable/fruit component.

(ii). - (vi). ...

(b). Breakfast

(i). Students must be offered all four-food items as listed in the Traditional School Breakfast Pattern chart in §755.I. SFAs are allowed, but not required, to implement Offer versus Serve at breakfast. Under this provision, students may decline one food item. The decision as to which food item to decline rests solely with the student. In schools not implementing Offer versus Serve, a student must take full portions of all food items offered.

1.f.ii.(b).(ii). - 2.d. ...

e. Menu Components

i. To meet the requirements of the National School Lunch/School Breakfast Programs, school meals must contain a specified quantity of each of the food components as described below. The quantities or serving sizes for these components vary according to the age/grade group of the students being served. (Refer to the Enhanced School Lunch/Breakfast Pattern charts found in §755.K and . Note that the charts specify required minimum quantities for different age/grade groups.) Schools are encouraged, but not required, to vary portion sizes by grade groups; however, if a school chooses not to vary portion sizes, each group must receive at least the minimum quantities required for that group. In other words, for a given group of students, the school may serve more than the minimum quantity, but not less. In addition to the required food components, larger servings and other foods may need to be served to increase the nutritional quality and acceptability of the meal.

(a). - (a).(i). ...

(ii). The quantity of meat or meat alternate shall be the quantity of the edible portion as served. To be counted as meeting this requirement, the meat or meat alternate shall be served either in a main dish or in a main dish and only one other menu item: that is, two menu items are the maximum number that may be used to meet the meat/meat alternate requirement. When two menu items are used, the combination must total the minimum quantity required, and the items should be merchandised together and served as a single item. For example, a soup and sandwich combo may be offered as a menu combination. (For quantity requirements by age/grade groups, refer to §755.K and L: Enhanced School Lunch/Breakfast Pattern Charts.)

(a).(iii). - (c).(iii). ...

(iv). Up to one grains/bread serving per day may be a dessert for grades K-12; dessert type items may not be counted as a grains/breads serving for preschool students. Snack type items such as hard pretzels and chips made from enriched or whole-grain meal or flour as well as bran and/or germ may be credited. (Refer to the Grains/Breads for Food Based Menu Planning chart in §755.J for specific food item and serving size requirements.)

(v). Enriched macaroni products with fortified protein may be used to meet the grains/breads requirement or to meet a part of the meat/meat alternate requirement but not both in the same meal. (Refer to §711.E.1.e.i(a)(viii)[1]:Meat/Meat Alternate, Enriched Macaroni with Fortified Protein.)

e.i.(c).(vi). - f.ii.(b).(vi). ...

g. Nutrient Standards and Analysis Requirements

i. SFAs shall ensure that participating schools provide nutritious and well-balanced meals that meet the Nutrient Standards as required by program regulations. The State Agency shall conduct a nutrient analysis of menus for one school week to determine whether the Nutrient Standards have been met. (Refer to § 755.B., Required Nutrient Standards for Enhanced Food Based Menu Planning.) If the SFA chooses to conduct its own analysis, the State Agency will review the SFA's nutrient analysis. SFAs must follow Nutrient Standard Menu Planning protocols to use the SFA's analysis. (Refer to §705, Computerized Nutrient Analysis for Additional Information.)

2.h. - 3.f.i.(c).(iii). ...

(d). Other Menu Items

(i). The category, other menu items, refers to any food other than the entree, fluid milk and foods of minimal nutritional value. (A sample is in the Supplement.) The menu planner may consider the "other menu items" category to be side dishes. Condiments such as relishes, catsup, mustard, mayonnaise, jelly, syrup, gravy, etc. may not be counted as other menu items.

3.g. - 4. ...

a. Assisted Nutrient Standard Menu Planning (ANSMP) is designed for SFAs that lack the technical resources to implement Nutrient Standard Menu Planning but would like to take advantage of its features. This option allows SFAs to use the expertise of outside entities, such as other SFAs, the State Agency, or a consultant, to develop a cycle menu, recipes, procurement specifications and production schedules that will allow school meals to meet the Nutrient Standards. These menus, recipes, etc. must be followed precisely. The SFA must have State Agency approval of initial menu cycle along with nutrient analysis, recipes, product specifications, and any other documentation requested by the State Agency. (For specific requirements, refer to §711.E.3, Nutrient Standard Menu Planning.)

5. - 5.a. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2137 (December 2001), amended LR 29:

### §713. Infant Meal Patterns

A. Infants under one year of age shall be served an infant breakfast and/or lunch as specified in §755.M. Foods within the infant meal patterns shall be of the texture and

consistency appropriate for the particular age group being served and shall be served to the infant during a span of time consistent with the infant's eating habits.

B. - B.3.b. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2148 (December 2001), amended LR 29:

### §727. Meal Substitutions for Medical or Dietary

#### Reasons

A. ...

B. Any changes to the regular school meal for medical or special dietary reasons must be appropriately documented. Changes to existing diet orders must also be documented. This documentation is required to justify that the modified meal is reimbursable and to ensure that any meal modifications meet nutrition standards that are medically appropriate for the specific child. When special meals or modifications are requested, a form that includes required information should be given to the parent or guardian so that the student's physician may correctly assess the condition and identify meal changes. (A sample is in the Supplement.) Although the form itself is not required, either a physician's statement or a diet prescription that includes the same information is required and must be kept on file in the school.

C. - C.1.d.iv. ...

e. Generally, children with food allergies or intolerance do not have a disability as defined by Federal Regulations. However, it is possible that such food allergies or intolerance will limit a major life activity. When faced with a request for special meals for such children, the food service personnel must abide by the determination of the physician.

1.f. - 3.a. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2149 (December 2001), amended LR 29:

### §729. Nonstudent Meals

A. - A.2.a. ...

3. Contract Meals

a. SFAs may contract meal service to nonschool programs such as Head Start, day care programs, and elderly feeding programs. There must be an annual contract between the two agencies stipulating the necessary terms. Contracts should protect both parties and be reviewed by an attorney. (A sample is in the Supplement.) Copies of new and renewed contracts must be submitted to the State Agency. Contracts will become part of the SFAs Permanent Agreement with the State Agency. (Refer to §337.A.1.f: Costing of Contract Meals, for additional information.)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2150 (December 2001), amended LR 29:

### §735. Second Servings

A. ...

B. Students who receive a complete meal in the form of second servings are required to pay the at cost price of the

meal. A complete meal is defined as the number of meal components that constitutes a reimbursable meal. Second servings cannot be claimed for reimbursement.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2151 (December 2001), amended LR 29:

**§737. Extra Sales**

A. ...

B. Schools must maintain proper accountability for extra sale items and must recover the full cost of producing the extra items plus a profit. At a minimum, these costs shall include food, labor (wages plus benefits), paper and nonfood supplies, transportation and utilities. (Refer to §337.A.1.i., Pricing for Extra Sales Items, for specific information concerning pricing procedures.) All monies earned or received must accrue to the school food service account.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2151 (December 2001), amended LR 29:

**§741. Competitive Foods**

A. - B.4. ...

a. Local school food service supervisors will provide principals and superintendents with information concerning the Competitive Foods Policy and regulations in regard to enforcement by the Louisiana DOE. The SFA will maintain documents that indicate each school's official schedule that includes designated times for lunch and concessions, if offered.

5. The SBESE recommends that all schools provide a minimum of 30 minutes per lunch period.

6. All complaints received by State DNA personnel regarding competitive foods violations, regardless of the source, will be forwarded to the local school food service supervisor for initial investigation.

7. Monitoring of competitive foods/concessions shall be conducted in the following manner:

a. Local school food service supervisors will have the responsibility to report to their superintendent/immediate supervisor and the principal in writing any competitive foods violations noted in the school. A written corrective action plan will be required from the principal to the superintendent with a copy to the school food service supervisor to ensure compliance.

b. The State or local SFA will make unannounced visits when notifications of violations are received. The school, organization, or individual(s) violating the competitive foods policy shall reimburse the school food service account for any funds withheld from the school food service program.

8. State DNA personnel will monitor competitive foods operations at local school systems on all State reviews or visits and shall have the responsibility and authority to assess fiscal sanctions.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2151 (December 2001), amended LR 29:

**§747. Donations of Leftover Food/Food Recovery Activities**

A. - A.4.h. ...

B. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2152 (December 2001), amended LR 29:

**§751. Removal/Transfer of Equipment, Food and Supplies**

A. Only authorized personnel may transfer equipment, food and supplies between schools. No foods, including leftovers, shall be removed from the school food service department by any employee of the school system. Legal action could result. Local policies that outline disciplinary action for unauthorized removal of equipment, food or supplies must be in place. (Refer to §2307, Food Taken from Schools, and §323.I, Disposition of Equipment for more information.)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2153 (December 2001), amended LR 29:

**§755. Appendices**

A. - E. ...

F. Guidance for Reviewing Product Formulation Statements

G. - M. ...

N. Repealed.

Appendices A. - G ...

<b>Appendix H. Traditional School Lunch Meal Patterns</b>					
<b>Traditional Food-Based Menu Planning Approach-Meal Pattern For Lunches</b>					
<b>Minimum Quantities</b>					<b>Recommended Quantities</b>
<b>Food Components And Food Items</b>	<b>Group I Ages 1-2 Preschool</b>	<b>Group II Ages 3-4 Preschool</b>	<b>Group III Ages 5-8 Grades K-3</b>	<b>Group IV Ages 9 And Older Grades 4-12</b>	<b>Group V Ages 12 And Older Grades 7-12</b>
Milk (as a beverage)	6 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces
Meat or Meat Alternate (quantity of the edible portion as served): Lean meat, poultry, or fish Alternate Protein Products 1 Cheese Large egg Cooked dry beans or peas Peanut butter or other nut or seed butters Yogurt, plain or flavored, unsweetened or sweetened The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above: Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish)	1 ounce 1 ounce 1 ounce 1/2 1/4 cup 2 tablespoons 4 ounces or 1/2 cup      1/2 ounce = 50%	1 1/2 ounces 1 1/2 ounces 1 1/2 ounces 3/4 3/8 cup 3 tablespoons 6 ounces or 3/4 cup   3/4 ounce = 50%	1 1/2 ounces 1 1/2 ounces 1 1/2 ounces 3/4 3/8 cup 3 tablespoons 6 ounces or 3/4 cup   3/4 ounce = 50%	2 ounces 2 ounces 2 ounces 1 1/2 cup 4 tablespoons 8 ounces or 1 cup   1 ounce = 50%	3 ounces 3 ounces 3 ounces 1 1/2 3/4 cup 6 tablespoons 12 ounces or 1 1/2 cups   1 1/2 ounce = 50%
Vegetable or Fruit: 2 or more servings of vegetables, fruits or both	1/2 cup	1/2 cup	1/2 cup	3/4 cup	3/4 cup
Grains/Breads: (servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or 1/2 cup of cooked rice, macaroni, noodles, other pasta products or cereal grains	5 servings per week 2 Cminimum of 1/2 serving per day	8 servings per week 2 Cminimum of 1 serving per day	8 servings per week 2 Cminimum of 1 serving per day	8 servings per week 2 Cminimum of 1 serving per day	10 servings per week 2 Cminimum of 1 serving per day

<sup>1</sup> Must meet the requirements in appendix A of CFR 210.

<sup>2</sup> For the purposes of this table, a week equals five days.

<b>Appendix I. Traditional School Breakfast Meal Pattern</b>			
<b>Traditional Food-Based Menu Planning Approach-Meal Pattern For Breakfasts</b>			
<b>Food Components and Food Items</b>	<b>Ages 1-2</b>	<b>Ages 3, 4, and 5</b>	<b>Grades K-12</b>
Milk (fluid) (as a beverage, on cereal or both)	4 fluid ounces	6 fluid ounces	8 fluid ounces
JUICE/FRUIT/VEGETABLE: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice	1/4cup	1/2 cup	1/2 cup
Select One Serving from Each of the Following Components, Two from One Component, or an Equivalent Combination: GRAINS/BREADS: Whole-grain or enriched bread Whole-grain or enriched biscuit, roll, muffin, etc. Whole-grain, enriched or fortified cereal MEAT OR MEAT ALTERNATES: Meat/poultry or fish Alternate protein products 1 Cheese Large egg Cooked dry beans or peas Peanut butter or other nut or seed butters Nuts and/or seeds (as listed in program guidance ) 2 Yogurt, plain or flavored, unsweetened or sweetened	1/2 slice 1/2 serving 1/4 cup or 1/3 ounce  1/2 ounce 1/2 ounce 1/2 ounce 1/2 2 tablespoons 1 tablespoon 1/2 ounce 2 ounces or 1/4 cup	1/2 slice 1/2 serving 1/3 cup or 1/2 ounce  1/2 ounce 1/2 ounce 1/2 ounce 1/2 2 tablespoons 1 tablespoon 1/2 ounce 2 ounces or 1/4 cup	1 slice 1 serving 3/4 cup or 1 ounce  1 ounce 1 ounce 1 ounce 1/2 4 tablespoons 2 tablespoons 1 ounce 1 ounce 4 ounces or 1/2 cup

<sup>1</sup> Must meet the requirements in appendix A of CFR 220.

<sup>2</sup> No more than 1 ounce of nuts and/or seeds may be served in any one breakfast.

<b>Appendix L. Enhanced Food-Based Menu Plan for Breakfast</b>				
<b>Enhanced Food-Based Menu Planning Approach-Meal Pattern For Breakfasts</b>				
<b>Food Components And Food Items</b>	<b>Required For</b>			<b>Option For</b>
	<b>Ages 1-2</b>	<b>Preschool</b>	<b>Grades K-12</b>	<b>Grades 7-12</b>
Milk (fluid) (as a beverage, on cereal or both)	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice	1/4 cup	1/2 cup	1/2 cup	1/2 cup
Select one serving from each of the following components, two from one component or an equivalent combination: <b>GRAINS/BREADS:</b> Whole-grain or enriched bread Whole-grain or enriched biscuit, roll, muffin, etc. Whole-grain, enriched or fortified cereal <b>MEAT OR MEAT ALTERNATES:</b> Meat/poultry or fish Alternate protein products 1 Cheese Large egg Cooked dry beans or peas Peanut butter or other nut or seed butters Nuts and/or seeds (as listed in program guidance) 2 Yogurt, plain or flavored, unsweetened or sweetened	1/2 slice 1/2 serving 1/4 cup or 1/3 ounce  1/2 ounce 1/2 ounce 1/2 ounce 1/2 2 tablespoons 1 tablespoon 1/2 ounce 2 ounces or 1/4 cup	1/2 slice 1/2 serving 1/3 cup or 1/2 ounce  1/2 ounce 1/2 ounce 1/2 ounce 1/2 2 tablespoons 1 tablespoon 1/2 ounce 2 ounces or 1/4 cup	1 slice 1 serving 3/4 cup or 1 ounce  1 ounce 1 ounce 1 ounce 1/2 4 tablespoons 2 tablespoons 1 ounce 4 ounces or 1/2 cup	1 slice 1 serving 3/4 cup or 1 ounce3  1 ounce 1 ounce 1 ounce 1/2 4 tablespoons 2 tablespoons 1 ounce 4 ounces or 1/2 cup

<sup>1</sup> Must meet the requirements in appendix A of CFR 220.

<sup>2</sup> No more than 1 ounce of nuts and/or seeds may be served in any one breakfast

<sup>3</sup> Plus an additional serving of one of the Grains/Breads on the above chart.

<b>Appendix M. Infant Breakfast Pattern</b>			
	<b>0-3 Months</b>	<b>4-7 Months</b>	<b>8-11 Months</b>
Iron Fortified Formula <sup>1</sup> or Breast Milk <sup>2 3</sup>	4-6 Fluid Ounces	4-8 Fluid Ounces	6-8 Fluid Ounces and
Iron Fortified Dry Infant Cereal <sup>1 4</sup>		0-3 Tablespoons (Optional)	2-4 Tablespoons and
Fruit and/or Vegetable <sup>4</sup>			1-4 Tablespoons

<sup>2</sup> It is recommended that breast milk be served in place of formula for infants from birth through 11 months.

<sup>3</sup> For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.

<sup>4</sup> A serving of this component is required only when the infant is developmentally ready to accept it.

\* One to four tablespoons meat, fish, poultry, egg yolk, cooked dry beans, or peas or 1/2-2 ounces cheese or 1-4 tablespoons cottage cheese, cheese food, or cheese spread

<b>Infant Lunch Pattern</b>			
	<b>0-3 Months</b>	<b>4-7 Months</b>	<b>8-11 Months</b>
Iron Fortified Formula <sup>1</sup> or Breast Milk <sup>2 3</sup>	4-6 Fluid Ounces	4-8 Fluid Ounces	6-8 Fluid Ounces and
Iron Fortified Dry Infant Cereal <sup>1 4</sup>		0-3 Tablespoons (Optional)	2-4 Tablespoons and/or 1-4 Tablespoons Meat/Alternate* and
Fruit And/Or Vegetable <sup>4</sup>		0-3 Tablespoons (Optional)	1-4 Tablespoons

<sup>1</sup> Infant formula and dry infant cereal shall be iron-fortified.

Appendix N. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2153 (December 2001), amended LR 29:

**Chapter 9. Afterschool Care Program**

**§901. General**

A. ...

B. The Afterschool Care Program must be administered by a school food authority (SFA) participating in the National School Lunch Program (NSLP) or by a public or private nonprofit organization participating through the Child and Adult Care Food Program (CACFP). Eligible organizations must enter into an agreement with the State Agency, thereby, assuming full responsibility for meeting all program requirements mandated by Federal and State laws.

C. ...

D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2160 (December 2001), amended LR 29:

**§911. Content of Meals**

A. ...

B. Participants must be given two different components of the four components specified in the snack meal pattern in order to claim a meal for reimbursement. Unlike NSLP and SBP, there is no Offer versus Serve option in the Afterschool Care Program.

C. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2161 (December 2001), amended LR 29:

**Chapter 11. Personnel**

**§1115. Description of Louisiana School Food Service Training Program**

A. ...

B. Phase I is designed for all food service technicians/employees. Phase I consists of basic information in the areas of safety, sanitation, equipment, food production, food handling, working with others, and nutrition. While Phase I is not mandated, anyone whom the SFA wants to become a manager must pass the Phase I Manager exam. The only prospective school food service managers exempt from this requirement are those persons with an associate's, bachelor's, or master's degree from a regionally accredited institution with 18 semester hours of Food and Nutrition and/or Institutional Management.

C. Phases II and III are designed for food service manager applicants. Phase II consists of areas of personnel, public relations, safety, sanitation, nutrition, food production, and property management.

D. - D.3. ...

E. Phase III is a training course that includes, but is not limited to, policies and history of Child Nutrition Programs, forms, food distribution. To be registered for Phase III, the applicant shall have passed the Phase II examination.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2166 (December 2001), amended LR 29:

**§1131. Staffing for Individual Programs**

A. A staffing formula using "meals per labor hour" (MPLH) is an excellent tool to assist in determining the

number of labor hours needed at an individual site or to determine the productivity rate of each site. The productivity rate or meals per labor hour (MPLH) is the number of meal equivalents (all lunches, 1/2 all breakfasts, 1/5 of all snacks, extra sales meal equivalents) produced and served per hour of labor used. (Refer to Chapter 3, §339 and §335 for additional information on converting breakfast, lunch, snacks, and extra sales into meal equivalents.) The MPLH may vary depending on the following factors:

1. type of food production system (on-site, central kitchen, bulk satellite, pre-plated satellite, etc.);
2. level of service (self-serve, plated on serving line) vending, etc.);
3. menu choices (scratch cooking versus convenience items);
4. kitchen layout and design;
5. facility size;
6. skill level of employees, etc.

B. The following steps may be used to develop a target MPLH:

1. determine a feasible target MPLH for each site; the determination can be based on industry standards or on data provided from the previous year's staffing decisions with necessary adjustments.

$$\text{Number of Meal Equivalents (Output)} \div \text{Productivity Rate or Meals per Number of Labor Hours (Input) Labor Hour (MPLH)}$$

2. calculate the MPLH for each site; an example is given below.

Site: School 444	No. Labor Hours Assigned: 36	Target MPLH: 15
Meals Served	Meal Equivalents	
ADP Lunch	335	335
ADP Breakfast	190	95
ADP Snack	76	15
Extra Sales Equivalents*		8
Total Meal Equivalents		453
MPLH = 453 meal equivalents ÷ 36 hours assigned labor/day = 14 Hours Over/Under: +1		
Meal Equivalents:		
1 lunch = 1 meal equivalent		
2 breakfasts = 1 meal equivalent		
5 snacks = 1 meal equivalent		
Extra sales income totaling the average cost of a meal from the previous school year = 1 meal equivalent		

$$\text{* Extra sales income from previous year} \div \text{meal equivalent factor/number of serving days} = \$3,066.50 \div 2.26 \div 180 = 8$$

3. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2167 (December 2001), amended LR 29:

**Chapter 15. Procurement**

**§1501. Purchasing Guidelines**

A. ...

B. An organized and efficient procurement procedure, which is an important aspect of food service, is essential for good management of the food service program. The SFS supervisor or manager should be responsible for determining the quality, quantity, performance, and usage of each product purchased. SFAs must have a written procurement plan that

contains the code of conduct and describes procurement procedures.

C. Procurement procedures must ensure that all Federal and State laws and regulations governing procurement are followed when purchasing materials and supplies utilized in the SFS program. These procedures include equipment, vehicles, and other movable property, food items and other supplies used in food service. It is not allowable to use school food service funds to purchase initial equipment for a school food service program. (Refer to Equipment Chapter §1303.)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2183 (December 2001), amended LR 29:

### §1503. Procurement Systems

#### A. Competitive Sealed Bids (Formal)

1. All purchases of materials and supplies exceeding the aggregate sum of \$15,000 must be formally bid. Aggregate is defined as the dollar value of items purchased from a single source for a bid period: for example, quotations are obtained on a food item for a two-month period, but the foods are ordered weekly during that period. No weekly invoices total \$15,000, but the total invoices during the two-month period are over \$10,000. In this example, the aggregate amount is the value of all items purchased during the two-month period, so the item must be formally bid.

2. Breaking up purchases with the intent of circumventing formal advertising procedures is contrary to Federal procurement regulations. Any change in the SFAs normal purchasing practices resulting in the aggregate amount purchased becoming less than \$15,000 must be documented for review and audit purposes.

#### 3. - 6.a. ...

b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Lower Tier Covered Transactions (All contracts > \$100,000) See §1517);

c. Certification Regarding Lobbying (All contracts > \$100,000) See §1517);

#### A.6.d. - B.1. ...

a. the aggregate amount does not exceed \$15,000.00; and/or

#### b. ...

2. Purchases of materials and supplies for which the aggregate amount does not exceed \$15,000 shall be made by obtaining an adequate number of price quotations. The adequate number of price quotations for any items purchased under small purchase procedures that must be obtained is determined by local market conditions. Regardless of dollar value, the SFA must have open and free competition. If in a small rural parish there are only two produce vendors that provide service to the area, two quotes may be sufficient. However, in a larger metropolitan area where there are six produce vendors, all six should be given an opportunity to submit price quotations.

3. Price quotes can be oral or written. At least three telephone, handwritten or facsimile quotations must be obtained for materials and supplies costing less than \$15,000. A written confirmation of the accepted offer shall be obtained and made part of the purchase file. If quotations

lower than the accepted quotations are received, the reasons for their rejection shall be recorded in the purchase file. All written documentation must be maintained on file for three years after final payments have been made for the Federal fiscal year to which they pertain.

#### 3.a. - 7. ....

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2183 (December 2001), amended LR 29:

### §1509. Other Procurement Methods

#### A. - D.a. ....

#### E. Purchasing from a Sole Source/Single Source

1. Several methods can be used when purchasing from a sole or single source. A SFA can use small purchase procedures by soliciting quotes when the aggregate amount is under \$15,000. Documentation of contacts must be maintained. Competitive sealed bids (formal advertising) must be used when the aggregate amount is over \$15,000. If the aggregate amount of a purchase exceeds \$15,000, a SFA must go through the regular bidding process even if only one source is known. If only one bid was received, documentation would be available from the single source. If no bids were received, the SFA must re-bid or consider cooperative (piggyback) purchasing, or State Bid Contract. Non-competitive negotiation may also be used if the other methods have failed. The decision to use non-competitive negotiation must be adequately justified in writing and available for audit and review.

#### E.2 - G.1. ....

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2186 (December 2001), amended LR 29:

### §1511. Diversion of Commodities for Processing

A. Federal and State procurement regulations must be followed when contracting for the processing of commodities. All contracts exceeding the sum of \$15,000 shall be advertised and awarded to the lowest responsible bidder. Purchases less than \$15,000 shall be made by obtaining no fewer than three telephone, facsimile or hand written quotations. Bids shall be accepted only from approved USDA commodity processors.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2187 (December 2001), amended LR 29:

### §1533. Instructions to Vendor

#### A. - B.1. ...

2. When a public SFA desires to purchase technical equipment, apparatus, machinery, materials, or supplies of a certain type and such purchases are clearly in the public interest, the SFA may specify a particular brand, make, or manufacturer in the specifications let out for public bid. If a particular brand, make or manufacturer is specified, the model or catalog number shall be specified. The brand name or equal description may be used as a means of defining a quality standard. Wherever in specifications the name of a certain brand, make, manufacturer, or definite specification is utilized, the specifications shall state clearly that they are

used only to denote the quality standard of product desired and that they do not restrict bidders to the specific brand, make, manufacturer, or specification named; that they are used only to set forth and convey to prospective bidders the general style, type, character, and quality of product desired; and that equivalent products will be acceptable. Specifications must state clearly when and where deliveries are to be made.

C. - M.1. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2190 (December 2001), amended LR 29:

**Chapter 17. Commodities**

**§1709. Care and Storage of Commodities**

A. - A.1.d.i. ...

ii. and properly dispose of the out of condition food;

iii. Any shortages found during the delivery check should be noted on the receiving documents. The receiving documents must be signed by the driver to confirm the differences due to shortages or out-of-condition foods.

2. - 2.a. ...

b. physical inventory of all USDA commodities on hand must be taken on the last working day of the month and submitted to LDAF by the 10th of each month.

c. Perpetual inventories must be reconciled with physical inventory monthly.

d. Food should be ordered in quantities that can be properly stored and utilized without waste. An inventory of no more than a six-month supply of commodities should be maintained except in unusual circumstances.

3. - 3.a.-b. ...

4. Cooler/Freezer Checks

a. Cooler and freezer temperatures must be checked at least every other day, even during vacation and holiday periods. The only allowable exception is when it is not possible to monitor on weekends, in which case temperature checks should be made late Friday afternoon and early Monday morning. Automated alarm systems may be used if they produce written records of temperatures and dates upon request. Documentation is required each time the acceptable range is exceeded.

4.b. - 5.a. ...

6. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2193 (December 2001), amended LR 29:

**Chapter 19. Sanitation**

**§1911. Cooking**

A. - E. ...

F. Cutting boards, knives, and other food contact surfaces shall be washed, rinsed, and sanitized after each contact with a potentially hazardous food. It is recommended that cutting boards of different colors be used for different foods. For example, red for meat, blue for poultry, and green for fresh vegetables.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2195 (December 2001), amended LR 29:

**Chapter 21. Civil Rights Handling Complaints**

**§2101. Responsibilities of the SFA**

A. - A.1.b. ...

2. Parents or guardians of children, as well as local minority and grassroots organizations, must be informed of the availability of program benefits and services, the nondiscrimination policy, and all significant changes in existing requirements that pertain to program eligibility and benefits. This dissemination of the information may be accomplished through the news release, letters to parents, the income scale, and the application form.

A.3. - B. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 27:2197 (December 2001), amended LR 29:

**Chapter 25. Summer Food Service Program**

**§2523. Audit Requirements for the Summer Food Service Program**

A. Refer to §333 for specific audit requirements that also apply to approved, participating sponsoring institutions.

B. Reporting to the Louisiana Department of Education. If a participating sponsoring institution's Federal expenditures are less than \$300,000 in a fiscal year, that sponsoring institution shall annually report this information to the Louisiana Department of Education, to ensure compliance with Federal audit requirements.

1. Circular A-133 Subpart A §105 defines recipient or subrecipient. The main criteria for determining if a sponsoring institution is a recipient or a subrecipient of Federal funds is compliance with Federal program requirements as a criteria of receiving and expending the Federal funds.

C. While a sponsoring institution that does not meet the annual Federal expenditure threshold of \$300,000 is not required to have an audit of such funds, records must be available for review or audit by appropriate officials of any federal, state, or local government agency.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1737 (August 2002), amended LR 29:

**Chapter 29. Child and Adult Care Food Program**

**§2911. Audit Requirements for the Child and Adult Care Food Program**

A. Refer to §333 for specific audit requirements that also apply to approved, participating sponsoring institutions.

B. Reporting to the Louisiana Department of Education. If a participating sponsoring institution's Federal expenditures are less than \$300,000 in a fiscal year, that sponsoring institution shall annually report this information to the Louisiana Department of Education, to ensure compliance with Federal audit requirements.

1. Circular A-133 Subpart A §105 defines recipient or subrecipient. The main criteria for determining if a sponsoring institution is a recipient or a subrecipient of Federal funds is compliance with Federal program



requirements as a criteria of receiving and expending the Federal funds.

C. While a sponsoring institution that does not meet the annual Federal expenditure threshold of \$300,000 is not required to have an audit of such funds, records must be available for review or audit by appropriate officials of any federal, state, or local government agency.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1737 (August 2002), amended LR 29:

### **Chapter 31. Disaster Feeding**

#### **§3115. Procedures to Follow after the Shelter Class**

A. Complete and submit the commodity forms to Food Distribution Division within 24 hours after site closure.

B. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2208 (December 2001), amended LR 29:

#### **§3119. Food Salvage at School Sites**

A. ...

B. In case of floods, destroy all foods that may have come into direct contact with flood-waters. Unless exposed to floodwaters (through seepage into freezer), solid frozen foods are usually safe. Intact (not dented or bulging) canned foods can be salvaged by removing labels and scrubbing the surfaces with hot soapy water. Rinse cans with clean water and soak in chlorine solution for 90 seconds. Mark the can with its content name and expiration date.

C. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2208 (December 2001), amended LR 29:

#### **§3121. Power Outages**

A. Refer to Chapter 19, Sanitation.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2208 (December 2001), amended LR 29:

### **Chapter 33. Financial Management and Accounting for Child and Adult Care Food Program Family Day Care Homes (FDCH)**

#### **§3313. Audit/Review**

A. - A. 1. ...

2. Reporting to the Louisiana Department of Education. If a participating sponsor's Federal expenditures are less than \$300,000 in a fiscal year, that sponsor shall annually report this information to the Louisiana Department of Education, to ensure compliance with Federal audit requirements.

a. Circular A-133 Subpart A §105 defines recipient or subrecipient. The main criteria for determining if a sponsor is a recipient or a subrecipient of Federal funds is compliance with Federal program requirements as a criteria of receiving and expending the Federal funds.

b. While a sponsoring institution that does not meet the annual Federal expenditure threshold of \$300,000 is not required to have an audit of such funds, records must be

available for review or audit by appropriate officials of any federal, state, or local government agency.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 27:2213 (December 2001), amended LR 28:1738 (August 2002), LR 29:

### **Chapter 34. Louisiana Child Nutrition Programs Appeals Procedures**

#### **§3401. Purpose**

A. The rules and regulations contained in this Subpart shall govern and control procedures used by the Louisiana Department of Education, Division of Nutrition Assistance (hereafter referred to as State Agency) for taking action against a school food authority or a child and adult care food program sponsor (hereafter referred to as institution).

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1738 (August 2002); amended LR 29:

#### **§3403. Service**

A. The service of the Notice of Proposed Action, Request for Appeal and Decision shall be made personally or by official U.S. postal certified mail, return receipt requested.

B. Service upon an institution's authorized representative, officer, or agent constitutes service upon that institution.

C. Service by certified mail is complete upon the date of receipt. An official U.S. postal receipt from the certified mailing constitutes prima facie evidence of service. Any other orders, notices, or documents served or exchanged pursuant to these rules shall be done through personal service, the U.S. mail, all postage prepaid, facsimile or email. Refer to the Glossary for specific definition of notices.

1. For purposes of determining whether services have been timely made, if the last day of any deadline established by these rules falls on a weekend or a state holiday, service is considered timely made if received on or before the close of business of the next business day. If the deadline for service falls on a business day, service must be made before close of business that day.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 210-245.

HISTORICAL NOTE Promulgated by the Board of Elementary and Secondary Education, LR 28:1738 (August 2002), amended LR 29:

#### **§3405. Notice of Proposed Action**

A. The State Agency shall notify the institution, in writing, of the actions being taken through a "Notice of Proposed Action." This notice shall contain the following information:

1. a list of specific violations of program rules and regulations alleged to have been committed by the institution;

2. the specific amount of the fiscal sanction assessed against the institution, if any;

3. a statement specifying what action the institution must take to correct the violation(s) to avoid further proceedings;

4. a statement of the time lines related to the proposed action;

5. a statement as to the consequences for failing to timely take corrective actions, make payments, or make a Request for Appeal;

6. a statement of the institution's right to appeal the proposed action;

7. the name, address and telephone number of the hearing officer.

B. A Notice of Proposed Action suspending or terminating an institution's Child and Adult Care Food Program (CACFP) participation shall be sent to the institution's executive director, the chairman of the board of directors, identified responsible principals and responsible individuals and shall also include further suspension proceedings as required in the CACFP regulations.

C. If the proposed suspension is due to the institution's submission of a false or fraudulent claim for reimbursement, the Notice of Proposed Action shall also state:

1. that the effective date of suspension will be 10 days after the institution's receipt of the suspension notice;

2. the institution's written request for a suspension review must be received by the hearing officer within 10 days of the institution's receipt of the Notice of Proposed Action along with written documentation opposing the proposed suspension.

D. The institution must also send a copy of the request for a suspension review to the State Agency.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002), amended LR 29:

#### **§3407. Request for Appeal**

A. Institutions wishing to appeal proposed actions (except suspension of CACFP participation) shall serve a written Request for Appeal upon the State Agency not later than 15 calendar days after the date of receipt of the Notice of Proposed Action.

B. The Request for Appeal shall contain the following information:

1. a listing of what specific violations set forth in the Notice of Proposed Action are being appealed together with a short and plain statement of each contested issue of fact or law concerning each violation;

2. a statement specifying which of the following two forms of appeal an institution seeks:

a. a review of the records with the right to submit additional written information to dispute the proposed action; or

b. a hearing. Appeals will be conducted by a fair and impartial hearing officer. The institution may be represented by legal counsel or another designated individual;

c. a statement as to the relief or remedy the institution seeks from the appeal.

C. The State Agency must acknowledge receipt of the Request for Appeal within 10 calendar days of its receipt of the request.

D. Institutions wishing to have a review of the State Agency's proposed suspension of their CACFP participation

must submit a written request for a review directly to the hearing officer at the same time.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002), amended LR 29:

#### **§3409. Appeals on the Record; Submissions**

A. Institutions and responsible principals and responsible individuals opting to appeal proposed actions by a review of the record shall submit all documents and information, in written form, that they wish to have considered in the appeal to the hearing officer not later than 30 calendar days after receipt of the Notice of Proposed Action.

B. The State Agency shall submit all documents and written information it wishes to have considered to the hearing officer not later than 30 calendar days after the institution's receipt of the Notice of Proposed Action.

C. Any information on which the State Agency's action was based must be available to the institution and the responsible principals and responsible individuals for inspection from the date of the State Agency's receipt of the Request for Appeal.

D. The hearing officer must conduct a hearing in addition to, or in lieu of, a review of the record only if the institution or the responsible principals and responsible individuals request a hearing in the written Request for Appeal.

E. The hearing officer must immediately notify the State Agency that an institution has contested the proposed suspension.

1. The State Agency must immediately submit to the hearing officer a copy of the Notice of Proposed Action suspending the institution's CACFP participation and all supporting documents.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002), amended LR 29:

#### **§3410. Notice and Time of Hearing**

A. If a hearing (not suspension review) is requested in writing, the hearing officer shall schedule the hearing date to allow rendering of the decision within 60 days from the date of receipt of the Request for Appeal by the State Agency. The hearing officer shall notify the institution and the State Agency in writing of the time, date, and place of the hearing, at least 10 calendar days in advance of the date of the hearing.

B. A representative of the State Agency must be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the hearing officer.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002), repromulgated LR 28:1950 (September 2002), amended LR 29:

#### **§3411. Effect of Appeal upon Agency Actions**

A. The Notice of Proposed Action issued to the institution shall remain in effect until the decision is rendered in the appeal.

B. The State Agency must assess interest on overpayments in the Notice of Proposed Action, through the appeal period, unless the hearing officer's decision overturns the State Agency's action establishing the overpayment.

C. During the appeal period, the State Agency must continue its efforts to recover any advances that are in excess of the claim for reimbursement for the applicable period.

D. Participating institutions may continue to operate and receive reimbursement for which they are eligible under the program during an appeal of a proposed action, unless the State Agency's action suspends the participation of an institution. Federal CACFP regulations specify reasons for State Agency suspension such as an imminent threat to the health or welfare of the public caused by the institution or to the participants at an institution, or the institution has knowingly submitted a false or fraudulent claim for reimbursement. The basis for the suspension must be stated in the Notice of Proposed Action.

1. The State Agency is prohibited from paying any claims for reimbursement received from a suspended institution unless the hearing officer's decision overturns the State Agency's action.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002), amended LR 29:

### §3413. Default

A. The hearing officer may declare any party in default who, without good cause shown:

1. fails to file brief or memorandums or exchange information and evidence as may be required by the hearing officer or these rules;

2. fails to appear at or participate in any pre-hearing conference;

3. fails to appear at or to participate in the hearing.

B. If the institution's representative, or the responsible principals or responsible individuals or their representative fail to appear at a scheduled hearing, they waive the right to a personal appearance before the hearing officer, unless the hearing officer agrees to reschedule the hearing.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1739 (August 2002), amended LR 29:

### §3419. Decision, Judicial Review, Records

A. The hearing officer shall render a decision which shall include findings of fact, conclusions, and a statement as to the reasons for the decision. The decision (except for suspension reviews) shall be rendered within 60 days of the receipt of the Request for Appeal by the State Agency. The decision on the State Agency's proposed participation suspension shall be rendered within ten days of the hearing officer's receipt of the institution's documentation opposing the proposed suspension. The decision shall be served to the institution and the State Agency by the hearing officer and shall constitute the final State Agency action for purposes of judicial or other review. The decision of the hearing officer can be appealed as provided by law.

B. The appeal record, where the institution chooses to submit written information to dispute the State Agency action taken against it, shall consist of that written information together with such written information as the State Agency chooses to likewise submit to support its Notice of Proposed Action and the decision thereon.

C. The appeal record of a hearing shall consist of the evidence submitted at the hearing, a statement of any matter officially noticed, offers of proof, objections and rulings thereon, a recording of the hearing procedures, and the hearing officer's decision. A verbatim transcript of the recorded proceedings shall not be accomplished unless requested by one of the parties, at its cost, or in the event of a judicial appeal.

D. The hearing officer shall be the custodian of the records. The appeal record shall be maintained for a period of not less than three years from the date the decision is mailed to the institution or the date of the submission of the final claim for reimbursement of the action involving the appeal or resolving of the action, whichever comes later.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1740 (August 2002), amended LR 29:

## Chapter 35. Glossary

### §3501. Definitions/Abbreviations

*Accrual Basis Accounting* that revenue is reported in which the service (or sale) occurs regardless of when the payment is received. Liabilities are reported in the period in which they are incurred regardless of when the payment is made.

*Adopted Child* a child for whom a household has accepted legal responsibility and who is considered to be a member of the household.

\*\*\*

*Allowable Costs* authorized expenditures, both operating and administrative, that are necessary and reasonable for proper and efficient administration of the child nutrition program.

\*\*\*

*Competitive Sealed Bids* the procurement method, commonly called formal bid procedure, required by Federal regulations whenever the aggregate purchase amount exceeds \$15,000. Purchase by competitive sealed bids requires:

1. a public advertisement of the invitation to bid;
2. bid solicitations from an adequate number of known suppliers;
3. a clear description of the items or services needed; and
4. the public opening of bids.

\*\*\*

*Formal Bid* a common name for the purchase method of using competitive sealed bids. A formal bid, or competitive sealed bid, is required by Federal and State regulations when the aggregate purchase amount exceeds \$15,000.

\*\*\*

*Institution* a public or private (nonprofit, proprietary Title XIX, proprietary Title XX, or other as allowed by the United

States Department of Agriculture) organization that holds an approved agreement with the State Agency to administer a child nutrition program(s) in accordance with all applicable Federal and State regulations.

\*\*\*

**Noncompetitive Negotiation**Ca procurement method that may be used when no price quotes can be obtained. It may be used when the item is available from a sole source; when a public emergency exists and the urgency for the item will not permit a delay for competitive solicitation; or when, after solicitation from a number of sources, competition is determined to be inadequate. If the cost of the item is more than \$15,000, State Agency authorization must be secured.

\*\*\*

**Notice**Ca letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a State agency or the United States Department of Agriculture, Food and Nutrition Service with regard to an institution's Program reimbursement or participation. Notice also means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a sponsoring organization with regard to a day care home's participation. The notice must specify the action being proposed or taken and the basis for the action, and is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.

\*\*\*

**Responsible Principal or Responsible Individual**

1. a principal, whether compensated or uncompensated, who the State Agency or the United States Department of Agriculture, Food and Nutrition Service (FNS) determines to be responsible for an institution's serious deficiency;

2. any other individual employed by, or under contract with, an institution or sponsored center, who the State Agency or FNS determines to be responsible for an institution's serious deficiency; or

3. an uncompensated individual who the State Agency or FNS determines to be responsible for an institution's serious deficiency.

\*\*\*

**Small Purchase Procedure**Ca type of procurement method that may be utilized whenever:

1. the aggregate purchase amount of food does not exceed \$15,000 (exception: milk and milk products);

2. the purchases are for highly perishable materials (for example, fresh produce); or

3. the purchase is for materials, equipment and/or supplies under \$15,000. Equipment and supplies costing less than \$15,000, must have no fewer than three telephone, facsimile or written quotations.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7(5); R.S. 17:10; R.S. 17:82; R.S. 17:191-1999; R.S. 1792.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2220 (December 2001), amended LR: 29:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule effect the stability of the family? No

2. Will the proposed Rule effect the authority and rights of parents regarding the education and supervision of their children? No

3. Will the proposed Rule effect the functioning of the family? No

4. Will the proposed Rule effect family earnings and family budget? No

5. Will the proposed Rule effect the behavior and personal responsibility of children? No

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes

Interested persons may submit comments until 4:30 p.m., August 9, 2003, 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: Louisiana Food and Nutrition Programs Policies of Operation**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated costs (savings) to state or local governmental units. This is a revision of *Bulletin 1196* which has incorporated all Federal and State policy changes which have already been implemented by the School Food Authorities. There will be no costs due to the fact the Bulletin will be on the Website and can be downloaded.

The State Board of Elementary and Secondary Education estimated cost for printing this policy change and first page of the fiscal and economic impact statement in the Louisiana Register is approximately \$816.00. Funds are currently budgeted for this purpose.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no estimated effect on revenue collection of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)**

There will be no costs or economic benefits to directly affect persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0306#069

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.701-705, 805, and 2103)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3026, R.S. 3041.10-15, R.S. 17:3042.1, and R.S. 17:3048.1).

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

**Title 28  
EDUCATION**

**Part IV. Student Financial Assistance  
Higher Education Scholarship and Grant Programs  
Chapter 7. Tuition Opportunity Program for  
Students (TOPS) Opportunity,  
Performance, and Honors Awards**

**§701. General Provisions**

A. - D.3. ...

E. Award Amounts. The specific award amounts for each component of TOPS are as follows.

1.a. The TOPS Opportunity Award provides an amount equal to undergraduate tuition for full-time attendance at an eligible college or university for a period not to exceed eight semesters, including qualified summer sessions, twelve quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, §503.D, §509.C., or §701.E.1.b. Attending a qualified summer session for which tuition is paid will count toward the eight-semester limit for TOPS.

b. The semester or term count for a student shall not be increased for any semester or term a student is unable to complete because of orders to active duty in the United States Armed Forces or National Guard, whether or not a full refund for the TOPS payment for that semester or term is received by LOSFA.

2.a. The TOPS Performance Award provides a \$400 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, §503.D, §509.C., or §701.E.2.b. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight-semester limit for TOPS.

b. The semester or term count for a student shall not be increased for any semester or term a student is unable to

complete because of orders to active duty in the United States Armed Forces or National Guard, whether or not a full refund for the TOPS payment for that semester or term is received by LOSFA, provided that any amount of a stipend paid and not refunded shall be counted toward the total stipends allowed by law.

3.a. The TOPS Honors Award provides an \$800 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and each program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, §503.D, §509.C. or §701.E.3.b. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight-semester limit for TOPS.

b. The semester or term count for a student shall not be increased for any semester or term a student is unable to complete because of orders to active duty in the United States Armed Forces or National Guard, whether or not a full refund for the TOPS payment for that semester or term is received by LOSFA, provided that any amount of a stipend paid and not refunded shall be counted toward the total stipends allowed by law.

E.4. - 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 by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999), LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26:1995, 2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:

**§703. Establishing Eligibility**

A. - A.5.a.i. ...

ii. for purposes of satisfying the requirements of 703.A.5.a.i., above, or 803.A.6.a., the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses:

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	General Science, Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III*
Algebra II Geometry Trigonometry, Calculus, or Comparable Advanced Mathematics	Integrated Mathematics II Integrated Mathematics III Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Mathematics I, Advanced Mathematics II

Chemistry	Chemistry Com
Fine Arts Survey	Speech Debate (2 units)
Western Civilization	European History
*Applied Mathematics III was formerly referred to as Applied Geometry	

A.5.a.iii. - 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 by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64 and 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1998 and 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 and 1219 (August 2001), LR 27:1850 (November 2001), LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:

**§705. Maintaining Eligibility**

A. To continue receiving the TOPS Opportunity, Performance or Honors Awards, the recipient must meet all of the following criteria:

1. have received less than four years or eight semesters of TOPS Award funds, except as provided in §701.E.1.b, §701.E.2.b, and §701.E.3.b, provided that each two terms or equivalent units of enrollment in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree shall be the equivalent of a semester; and

A.2. - 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 by the Student Financial Assistance Commission, Office of Student Financial Assistance, 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 28:447 (March 2002), LR 28:772 (April 2002), LR 28:2332 (November 2002), LR 29:

**Chapter 8. TOPS-TECH Award**

**§805. Maintaining Eligibility**

A. To continue receiving the TOPS-TECH Award, the recipient must meet all of the following criteria:

1. have received the TECH Award for less than two years, except as provided by §805.C, unless reduced as required by §503.D; and

A.2. - B. ...

C. The semester or term count for a student shall not be increased for any semester or term a student is unable to complete because of orders to active duty in the United States Armed Forces or National Guard, whether or not a full refund for the TOPS Tech payment for that semester or term is received by LOSFA.

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), amended LR 25:1091 (June 1999), LR

26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997 and 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:

**Chapter 21. Miscellaneous Provisions and Exceptions  
§2103. Circumstances Warranting Exception to the  
Initial and Continuous Enrollment  
Requirements**

A. - E.11.c. ...

F. Students who are granted an exception based on military service in accordance with Subsection 2103.E.9 above and who desire to enroll as a part time student in an eligible postsecondary institution while on active duty shall be eligible on request for TOPS payment for such enrollment. Any payment for part time attendance under this subsection shall count towards the student's maximum eligibility for up to the equivalent of eight full time semesters of postsecondary education in part time and full time semesters.

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 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1015 (May 2000), LR 26:2002 (September 2000), LR 27:36 (January 2001), LR 27:1866 and 1875 (November 2001), LR 28:46 (January 2002), LR 28:449 (March 2002), LR 28:775 (April 2002), LR 28:2330 and 2333 (November 2002), LR 29:126 (February 2003), LR 29:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., July 20, 2003, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Scholarship/Grant Programs**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

State expenditures for TOPS awards are estimated to increase by up to \$30,650 for students unable to complete a term or semester because of orders to active duty and for whom a full refund of TOPS funds had not been made. No increase in funding is anticipated to result from the core curriculum change.

**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)**

These changes would provide students who are unable to complete a term or semester because of orders to active duty with an additional term or semester of TOPS regardless of whether a full refund of their TOPS funds had been made, provide for part-time enrollment for such students, and add course equivalents to the high school core curriculum requirements for TOPS eligibility.

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  
0306#019

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Concentrated Animal Feeding Operations  
(LAC 33:IX.2331, 2335, 2345, 2357, and 2533)(WQ050\*)

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.2331, 2335, 2345, 2357, and 2533 (Log #WQ050\*).

This proposed Rule is identical to federal regulations found in 68 FR 7265-7269, No. 29, 2/12/03, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed Rule ensures that concentrated animal feeding operations (CAFOs) take appropriate actions to manage manure effectively in order to protect the state's water quality. Improperly managed manure has caused serious, acute, and chronic water problems. This Rule will strengthen the requirements for CAFOs. The Rule establishes a mandatory requirement for all CAFOs to apply for an LPDES permit and to develop and implement a nutrient management plan. The revised guidelines establish performance expectations for existing and new sources to ensure appropriate storage of manure, as well as expectations for proper land application practices at the CAFO. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA and to keep Louisiana's water regulations current with their federal counterpart. The basis and rationale for this Rule are to protect the waters of the state of Louisiana and to mirror the federal regulations in order to maintain equivalency.

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 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, or discharges 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. All concentrated animal feeding operations have a duty to seek coverage under an LPDES permit as described in LAC 33:IX.2335.D.

**A.2. - I. ...**

1. For concentrated animal feeding operations (CAFOs):

- a. the name of the owner or operator;
- b. the facility location and mailing address(es);
- c. the latitude and longitude of the production area (entrance to production area);
- d. a topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of Paragraph F.7 of this Section;
- e. specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- f. the type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);
- g. the total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;
- h. the estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons);
- i. the estimated amounts of manure, litter, and process wastewater transferred to other persons per year (tons/gallons); and
- j. for CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient

management plan has been completed and will be implemented upon the date of permit coverage.

I.2. - R.4.h. ...

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 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:

### §2335. Concentrated Animal Feeding Operations

A. Permit Requirement for CAFOs. Concentrated animal feeding operations, as defined in Subsection B of this Section, are point sources that require LPDES permits for discharges or potential discharges. Once an operation is defined as a CAFO, the LPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

#### B. Definitions Applicable to this Section

*Animal Feeding Operation (AFO)* Ca 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.

*Concentrated Animal Feeding Operation (CAFO)* Can AFO that is defined as a *Large CAFO* or as a *Medium CAFO* by the terms of this Subsection, or that is designated as a CAFO in accordance with Subsection C of this Section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

*Land Application Area* Cland under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.

*Large Concentrated Animal Feeding Operation (Large CAFO)* Can AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- a. 700 mature dairy cows, whether milked or dry;
- b. 1,000 veal calves;
- c. 1,000 cattle other than mature dairy cows or veal calves (*Cattle* includes but is not limited to heifers, steers, bulls, and cow/calf pairs.);
- d. 2,500 swine, each weighing 55 pounds or more;
- e. 10,000 swine, each weighing less than 55 pounds;
- f. 500 horses;
- g. 10,000 sheep or lambs;
- h. 55,000 turkeys;
- i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

m. 5,000 ducks, if the AFO uses a liquid manure handling system.

*Manure* Cincludes manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

*Medium Concentrated Animal Feeding Operation (Medium CAFO)* Cincludes any AFO with the type and number of animals that fall within any of the ranges listed in this definition and that has been defined or designated as a CAFO. An AFO is a *Medium CAFO* if:

a. the type and number of animals that it stables or confines falls within any of the following ranges:

i. 200 to 699 mature dairy cows, whether milked or dry;

ii. 300 to 999 veal calves;

iii. 300 to 999 cattle other than mature dairy cows or veal calves (*Cattle* includes but is not limited to heifers, steers, bulls, and cow/calf pairs.);

iv. 750 to 2,499 swine, each weighing 55 pounds or more;

v. 3,000 to 9,999 swine, each weighing less than 55 pounds;

vi. 150 to 499 horses;

vii. 3,000 to 9,999 sheep or lambs;

viii. 16,500 to 54,999 turkeys;

ix. 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

x. 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

xi. 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

xii. 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or

xiii. 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. either one of the following conditions are met:

i. pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

ii. pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

*Process Wastewater* Cwater directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. *Process wastewater* also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

*Production Area* Cthat part of an AFO that includes the animal confinement area, the manure storage area, the raw



materials storage area, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of *production area* are any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities.

*Small Concentrated Animal Feeding Operation (Small CAFO)* Can AFO that is designated as a CAFO and is not a *Medium CAFO*.

C. How May an AFO be Designated as a CAFO? The appropriate authority (i.e., state administrative authority or regional administrator, or both, as specified in Paragraph C.1 of this Section) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the state.

1. Who May Designate?

a. Approved States. In states that are approved or authorized by EPA under 40 CFR Part 123, CAFO designations may be made by the state administrative authority. The regional administrator may also designate CAFOs in approved states, but only where the regional administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent state or Indian country water that is impaired for that pollutant.

b. States With No Approved Program. The regional administrator may designate CAFOs in states that do not have an approved program and in Indian country where no entity has expressly demonstrated authority and has been expressly authorized by EPA to implement the NPDES program.

2. In making this designation, the state administrative authority or the regional administrator shall consider the following factors:

- a. the size of the AFO and the amount of wastes reaching waters of the state;
- b. the location of the AFO relative to waters of the state;
- c. the means of conveyance of animal wastes and process wastewaters into waters of the state;
- d. the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, manure, and process wastewaters into waters of the state; and
- e. other relevant factors.

3. No AFO shall be designated under this Subsection unless the state administrative authority or the regional administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in the

definition of *Medium CAFO* in Subsection B of this Section may be designated as a CAFO unless:

a. pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

b. pollutants are discharged directly into waters of the state that originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

D. Who Must Seek Coverage Under an LPDES Permit?

1. All CAFO owners or operators must apply for a permit. All CAFO owners or operators must seek coverage under an LPDES permit, except as provided in Paragraph D.2 of this Section. Specifically, the CAFO owner or operator must either apply for an individual LPDES permit or submit a notice of intent for coverage under an LPDES general permit. If the state administrative authority has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the state administrative authority.

2. Exception. An owner or operator of a Large CAFO does not need to seek coverage under an LPDES permit otherwise required by this Section once the owner or operator has received from the state administrative authority notification of a determination under Subsection F of this Section that the CAFO has "no potential to discharge" manure, litter, or process wastewater.

3. Information to Submit with Permit Application. A permit application for an individual permit must include the information specified in LAC 33:IX.2331. A notice of intent for a general permit must include the information specified in LAC 33:IX.2331 and LAC 33:IX.2345.

E. Land application discharges from a CAFO are subject to LPDES requirements. The discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of the application of that manure, litter, or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to LPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For purposes of this Subsection, where the manure, litter, or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified under LAC 33:IX.2357.E.1.f-i, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

F. "No Potential to Discharge" Determinations for Large CAFOs

1. Determination by the State Administrative Authority. The state administrative authority, upon request, may make a case-specific determination that a Large CAFO has "no potential to discharge" pollutants to waters of the state. In making this determination, the state administrative authority must consider the potential for discharges from both the production area and any land application areas. The state administrative authority must also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have "no potential to discharge" if it has had a discharge within the five years prior to the date of the

request submitted under Paragraph F.2 of this Section. For purposes of this Section, the term "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition. A determination that there is "no potential to discharge" for purposes of this Section only relates to discharges of manure, litter, and process wastewater covered by this Section.

2. Information to Support a "No Potential to Discharge" Request. In requesting a determination of "no potential to discharge," the CAFO owner or operator must submit any information that would support such a determination within the time frame provided by the state administrative authority and in accordance with Subsections G and H of this Section. Such information must include all of the information specified in LAC 33:IX.2331.F and I.1.a-i. The state administrative authority has discretion to require additional information to supplement the request and may also gather additional information through on-site inspection of the CAFO.

3. Process for Making a "No Potential to Discharge" Determination. Before making a final decision to grant a "no potential to discharge" determination, the state administrative authority must issue a notice to the public stating that a "no potential to discharge" request has been received. This notice must be accompanied by a fact sheet that includes, when applicable, a brief description of the type of facility or activity that is the subject of the "no potential to discharge" determination, a brief summary of the factual basis upon which the request is based for granting the "no potential to discharge" determination, and a description of the procedures for reaching a final decision on the "no potential to discharge" determination. The state administrative authority must base the decision to grant a "no potential to discharge" determination on the administrative record, which includes all information submitted in support of a "no potential to discharge" determination and any other supporting data gathered by the permitting authority. The state administrative authority must notify any CAFO seeking a "no potential to discharge" determination of its final determination within 90 days of receiving the request.

4. What is the Deadline for Requesting a "No Potential to Discharge" Determination? The owner or operator must request a "no potential to discharge" determination by the applicable permit application date specified in Subsection G of this Section. If the state administrative authority's final decision is to deny the "no potential to discharge" determination, the owner or operator must seek coverage under a permit within 30 days after the denial.

5. The "no potential to discharge" determination does not relieve the CAFO from the consequences of an actual discharge. Any unpermitted CAFO that discharges pollutants into the waters of the state is in violation of the Clean Water Act even if it has received a "no potential to discharge" determination from the state administrative authority. Any CAFO that has received a determination of "no potential to discharge," but which anticipates changes in circumstances that could create the potential for a discharge, should contact

the state administrative authority and apply for and obtain permit authorization prior to the change of circumstances.

6. The state administrative authority retains authority to require a permit. When the state administrative authority has issued a determination of "no potential to discharge," the state administrative authority retains the authority to subsequently require LPDES permit coverage if circumstances at the facility change, if new information becomes available, or if there is another reason for the state administrative authority to determine that the CAFO has a potential to discharge.

G When Must a CAFO Seek Coverage Under an LPDES Permit?

1. Operations Defined as CAFOs Prior to April 14, 2003. For operations that were defined as CAFOs under regulations that were in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an LPDES permit as of April 14, 2003, and comply with all applicable LPDES requirements, including the duty to maintain permit coverage in accordance with Subsection H of this Section.

2. Operations Defined as CAFOs as of April 14, 2003, Which Were Not Defined as CAFOs Prior to That Date. For all such CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an LPDES permit by a date specified by the state administrative authority, but no later than February 13, 2006.

3. Operations That Become Defined as CAFOs After April 14, 2003, but Which Are Not New Sources. For newly constructed AFOs and AFOs that make changes to their operations that result in becoming defined as CAFOs for the first time after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under an LPDES permit, as follows:

a. for newly constructed operations not subject to effluent limitations guidelines, 180 days prior to the time the CAFO commences operation; or

b. for other operations (e.g., resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; except that

c. if an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until April 13, 2006, or 90 days after becoming defined as a CAFO, whichever is later.

4. New Sources. New sources must seek to obtain coverage under a permit at least 180 days prior to the time that the CAFO commences operation.

5. Operations That are Designated as CAFOs. For operations designated as a CAFO in accordance with Subsection C of this Section, the owner or operator must seek to obtain coverage under a permit no later than 90 days after receiving notice of the designation.

6. No Potential to Discharge. Notwithstanding any other provision of this Section, a CAFO that has received a "no potential to discharge" determination in accordance with Subsection F of this Section is not required to seek coverage under an LPDES permit that would otherwise be required by this Section. If circumstances materially change at a CAFO that has received a "no potential to discharge" determination, such that the CAFO has a potential for a discharge, the

AFO has a duty to immediately notify the state administrative authority and seek coverage under an LPDES permit within 30 days after the change in circumstances.

H. Duty to Maintain Permit Coverage. No later than 180 days before the expiration of a permit, the permittee must submit an application to renew its permit, in accordance with LAC 33:IX.2331.G. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

1. the facility has ceased operation or is no longer a CAFO; and
2. the permittee has demonstrated to the satisfaction of the state administrative authority that there is no remaining potential for a discharge of manure, litter, or associated process wastewater that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:467 (March 2002), LR 29:

### §2345. General Permits

A. - B.2.a. ...

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with LAC 33:IX.2333. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in LAC 33:IX.2331.I.1, including a topographic map.

B.2.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(September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2276 (October 2000), LR 26:2553 (November 2000), LR 28:468 (March 2002), LR 29:

### Subchapter C. Permit Conditions

#### §2357. Additional Conditions Applicable to Specified Categories of LPDES Permits

The following conditions, in addition to those set forth in LAC 33:IX.2355, apply to all LPDES permits within the categories specified below.

A. - D. ...

E. Concentrated Animal Feeding Operations (CAFOs). Any permit issued to a CAFO must include the following requirements.

1. Requirements to Develop and Implement a Nutrient Management Plan. At a minimum, a nutrient management

plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006, must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

- a. ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- b. ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- c. ensure that clean water is diverted, as appropriate, from the production area;
- d. prevent direct contact of confined animals with waters of the state;
- e. ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system that is not specifically designed to treat such chemicals and other contaminants;
- f. identify appropriate site-specific conservation practices to be implemented, including as appropriate, buffers or equivalent practices, to control runoff of pollutants to waters of the state;
- g. identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- h. establish protocols to land-apply manure, litter, or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and
- i. identify specific records that will be maintained to document the implementation and management of the minimum elements described in Subparagraphs E.1.a-h of this Section.

#### 2. Recordkeeping Requirements

a. The permittee must create, maintain for five years, and make available to the state administrative authority, upon request, the following records:

- i. all applicable records identified in accordance with Subparagraph E.1.i of this Section; and
- ii. in addition, all CAFOs subject to 40 CFR Part 412 must comply with recordkeeping requirements as specified in LAC 33:IX.2533.

b. A copy of the CAFO's site-specific nutrient management plan must be maintained on-site and made available to the state administrative authority upon request.

3. Requirements Relating to Transfer of Manure or Process Wastewater to Other Persons. Prior to transferring manure, litter, or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter, or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR Part 412. Large CAFOs must retain for five years records of the date, the recipient's name and

address, and the approximate amount of manure, litter, or process wastewater transferred to another person.

4. Annual Reporting Requirements for CAFOs. The permittee must submit an annual report to the state administrative authority. The annual report must include:

a. the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

b. the estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. the estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

d. the total number of acres for land application covered by the nutrient management plan developed in accordance with Paragraph E.1 of this Section;

e. the total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;

f. a summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and

g. a statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

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 29:

#### **Subchapter N. Incorporation by Reference**

##### **§2533. 40 CFR Chapter I, Subchapter N**

A. 40 CFR, Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2002, and amendments to Part 420 in 67 FR 58997, September 19, 2002; Part 430 in 67 FR 64260-64268, October 17, 2002; and Part 412 in 68 FR 7269, February 12, 2003 are hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:

A public hearing will be held on July 25, 2003, at 1:30 p.m. in the Galvez Building, Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting

should reference this proposed regulation by WQ050\*. Such comments must be received no later than July 25, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or by e-mail to [lynnw@ldeq.org](mailto:lynnw@ldeq.org). The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of WQ050\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>. It is anticipated that the DEQ Headquarters move from 7290 Bluebonnet Boulevard to 602 N. Fifth Street, Baton Rouge, LA, will be completed by mid-July.

James H. Brent, Ph.D.  
Assistant Secretary

0306#031

#### **NOTICE OF INTENT**

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

Incorporation by Reference of  
Amendments to 40 CFR Part 63  
(LAC 33:III.5122)(AQ233\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.5122 (Log #AQ233\*).

This proposed Rule is identical to federal regulations found in 68 FR 32586-32603, No. 104, May 30, 2003, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the proposed Rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule change incorporates by reference the amendments to the General Provisions for the National Emission Standards for Hazardous Air Pollutants (NESHAP) and to the Rule that establishes criteria and procedures for equivalent emission limitations - case-by-case maximum achievable control technology (MACT) adopted in accordance with the Clean Air Act, Section 112(j). EPA changed the criteria and procedures for case-by-case MACT for sources that do not have promulgated MACT rules. Provisions of this change may be operative before the

department promulgates its annual incorporation by reference in 2004. This action is necessary to keep the state regulations consistent with the federal regulations. 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 III. Air**

**Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program**

**Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources**

**§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2002, are hereby incorporated by reference as they apply to major sources in the state of Louisiana. Also incorporated by reference are amendments to EPA rule entitled "National Emission Standards for Hazardous Air Pollutants: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Section 112(g) and 112(j)," promulgated on May 30, 2003, in the *Federal Register*, 68 FR 32586-32603.

B. - C.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), LR 25:1464 (August 1999), LR 25:1798 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:

A public hearing will be held on July 25, 2003, at 1:30 p.m. in the Galvez Building, Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ233\*. Such comments must be received no later than July 25, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-

4314 or by e-mail to [lynnw@ldeq.org](mailto:lynnw@ldeq.org). The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of AQ233\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>. It is anticipated that the DEQ Headquarters move from 7290 Bluebonnet Boulevard to 602 N. Fifth Street, Baton Rouge, LA, will be completed by mid-July.

James H. Brent, Ph.D.  
Assistant Secretary

0306#025

**NOTICE OF INTENT**

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

Minerals Criteria Revision for Vermilion River,  
Bayou Teche, Bayou Courtableau, and  
West Atchafalaya Borrow Pit Canal  
(LAC 33:IX.1123)(WQ048)

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.1123 (Log #WQ048).

The Rule is intended to set site-specific chlorides (Cl), sulfates (SO<sub>4</sub>), and total dissolved solids (TDS) criteria for Bayou Courtableau, West Atchafalaya Borrow Pit Canal, Bayou Teche, and the Vermilion River. Respectively, these are subsegments 060204, 060211, 060301, and two subsegments for the Vermilion River, 060801 and 060802. Designated uses will remain as listed in LAC 33:IX.1123.Table 3. General and numerical criteria not specifically excepted in LAC 33:IX.1123.Table 3 shall apply. This action is required to establish proper and protective minerals criteria for subsegments 060204, 060211, 060301, 060801, and 060802. A site-specific criteria analysis was conducted in accordance with state and federal water quality regulations, policies, and guidance to develop appropriate site-specific criteria for these water bodies. Specifically, these water bodies are largely affected by fresh water diversions from the Atchafalaya River. The water chemistry in these systems is therefore more reflective of Atchafalaya River water. This rule recognizes the influence of the diverted water.

Analyses of use attainability are conducted by the department to determine the uses and criteria an individual

water body can attain. According to the regulations, a Use Attainability Analysis (UAA) is defined as "a structured scientific assessment of the factors (chemical, physical, biological, and economic) affecting the attainment of designated uses in a water body." (See 40 CFR 131.3(g) and LAC 33:IX.1105.) The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to establish site-specific uses and criteria. The basis and rationale for the proposed rule are to establish site-specific Cl, SO<sub>4</sub>, and TDS criteria for Bayou Courtableau (060204), West Atchafalaya Borrow Pit Canal (060211), Bayou Teche (060301), and Vermilion River (060801 and 060802).

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 11. Surface Water Quality Standards**  
**§1123. Numerical Criteria and Designated Uses**

A. - C.2. ...

3. Designated Uses. The following are the category definitions of Designated Uses that are used in Table 3 under the subheading "DESIGNATED USES."

- A – Primary Contact Recreation
- B – Secondary Contact Recreation
- C – Propagation of Fish and Wildlife
- L – Limited Aquatic Life and Wildlife Use
- D – Drinking Water Supply
- E – Oyster Propagation
- F – Agriculture
- G – Outstanding Natural Resource Waters

Numbers in brackets, e.g. [1], refer to endnotes listed at the end of the table.

<b>Table 3.</b>									
<b>Numerical Criteria and Designated Uses</b>									
A - Primary Contact Recreation; B - Secondary Contact Recreation; C - Propagation of Fish and Wildlife; D - Drinking Water Supply; E - Oyster Propagation; F - Agriculture; G - Outstanding Natural Resource Waters; L - Limited Aquatic Life and Wildlife Use									
Code	Stream Description	Designated Uses	Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
	ATCHAFALAYA RIVER BASIN (01)								
*** [See Prior Text In 010101 – 050901]									
	VERMILION-TECHE RIVER BASIN (06)								
*** [See Prior Text In 060101 – 060203]									
060204	Bayou Courtableau - origin to West Atchafalaya Borrow Pit Canal	A B C	65	70	[22]	6.0-8.5	1	32	440
*** [See Prior Text In 060206 – 060210]									
060211	West Atchafalaya Borrow Pit Canal - from Bayou Courtableau to Henderson, La., includes Bayou Portage	A B C	65	70	5.0	6.0-8.5	1	32	440
*** [See Prior Text In 060212]									
060301	Bayou Teche – Headwaters at Bayou Courtableau to Keystone Locks and Dam	A B C	65	70	5.0	6.0-8.5	1	32	440
*** [See Prior Text In 060401 – 060703]									
060801	Vermilion River - Headwaters at Bayou Fusilier-Bourbeaux junction to New Flanders (Ambassador Caffery) Bridge, Hwy. 3073	A B C F	230	70	5.0	6.0-8.5	1	32	440
060802	Vermilion River - from New Flanders (Ambassador Caffery) Bridge, Hwy. 3073, to Intracoastal Waterway	A B C F	230	70	[6]	6.0-8.5	1	32	440
*** [See Prior Text In 060803 – 120806]									

ENDNOTES:  
[1] – [22] ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1123 (November 1996), LR 24:1926 (October 1998),

amended by the Office of Environmental Assessment, Environmental Planning Division LR 25:2401 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:

A public hearing will be held on July 25, 2003, at 1:30 p.m. in the Galvez Building, Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are

**NOTICE OF INTENT**

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

invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ048. Such comments must be received no later than August 1, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or by e-mail to lynnw@ldeq.org. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of WQ048.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>. It is anticipated that the DEQ Headquarters move from 7290 Bluebonnet Boulevard to 602 N. Fifth Street, Baton Rouge, LA, will be completed by mid-July.

James H. Brent, Ph.D.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Minerals Criteria Revision for Vermilion  
River, Bayou Teche, Bayou Courtableau, and  
West Atchafalaya Borrow Pit Canal**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No significant effect of this proposed rule on state or local governmental expenditures is anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No significant effect on state or local governmental revenue collections is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No significant costs and/or economic benefits to directly affected persons or non-governmental groups are anticipated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No significant effect on competition or employment is anticipated.

James H. Brent, Ph.D.  
Assistant Secretary  
0306#029

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

NRC Amendments to Radiation Protection Regulations  
(LAC 33:XV.430, 440, 441, 442, 543, 544,  
575, 577, 1739, 1755, 2003, 2014, 2017,  
2022, 2036, 2051, and Chapter 20)(RP032\*)

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 Radiation Protection regulations, LAC 33:XV.430, 440, 441, 442, 543, 544, 575, 577, 1739, 1755, 2003, 2014, 2017, 2022, 2036, 2051, & Chapter 20, Appendix B (Log #RP032\*).

This proposed rule is identical to federal regulations found in 10 CFR 20.1701-03, 34.25, 34.43, 34.47, 34.83, 36.55, 36.81, 39.2, 39.15, 39.35, 39.41, 39.49, 39.53, 39.65, and 39.77, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule will bring state regulations into line with existing federal Nuclear Regulatory Commission rules to preserve the state's status as an agreement state. Changes include updating some calibration, inspection, processing, and replacement intervals; changing various references to a more generic term, "personnel dosimeter"; clarifying the responsible office of the department; expanding and detailing the section on Design, Performance, and Certification Criteria for Sealed Sources Used in Downhole Operations; and adding definitions, reporting and notification provisions, safety and health factors, etc. 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 XV. Radiation Protection  
Chapter 4. Standards for Protection Against  
Radiation  
Subchapter C. Surveys and Monitoring  
§430. General**

- A. - B. ...
- C. Personnel Dosimeter Processing
  - 1. All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that

require processing to determine the radiation dose and that are used by licensees and registrants to comply with LAC 33:XV.410, with other applicable provisions of these regulations, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

- a. holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and
- b. approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

2. Dosimetry reports received from the processor must be recorded and maintained indefinitely or until the Office of Environmental Services, Permits Division, terminates the license.

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended LR 20:653 (June 1994), LR 22:971 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:

#### **Subchapter E. Respiratory Protection and Controls to Restrict Internal Exposure in Restricted Areas**

##### **§440. Use of Process or Other Engineering Controls**

A. The licensee or registrant shall use, to the extent practicable, process or other engineering controls, such as containment, decontamination, or ventilation, to control the concentrations of radioactive material in air.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:

##### **§441. Use of Other Controls**

A. - A.4. ...

B. If the licensee or registrant performs an ALARA analysis to determine whether or not respirators should be used, the licensee or registrant may consider safety factors other than radiological factors. The licensee or registrant should also consider the impact of respirator use on workers' industrial health and safety.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:

##### **§442. Use of Individual Respiratory Protection Equipment**

A. - A.3.c. ...

d. providing atmosphere-supplying respirators with respirable air of grade D quality or better as defined by the

Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997, and included in the regulations of the Occupational Safety and Health Administration (29 CFR 1910.134(i)(1)(ii)(A) through (E)). Grade D quality air criteria include:

- i. oxygen content (v/v) of 19.5-23.5 percent;
- ii. hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;
- iii. carbon monoxide (CO) content of 10 ppm or less;
- iv. carbon dioxide content of 1,000 ppm or less;

and

- v. lack of noticeable odor;
- e. fit testing, with fit factor = 10 times the APF for negative pressure devices, and a fit factor = 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one year. Fit testing must be performed with the facepiece operating in the negative pressure mode;
- f. written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and
- g. determination by a physician prior to initial fitting of respirators, and at least every 12 months thereafter, that the individual user is physically able to use the respiratory protection equipment;

4. - 4.a. ...

b. the routine, nonroutine, and emergency use of respirators;

c. ...

d. the availability of standby rescue persons to assist all respirator users and to provide effective emergency rescue if needed; and

e. provision for the availability of standby rescue persons who:

- i. are required to be present in situations whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself;

- ii. must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards; and

- iii. shall observe or otherwise maintain continuous communication with the workers (by visual, voice, signal line, telephone, radio, or other suitable means) and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress;

A.5. - B.1. ...

2. the licensee or registrant shall obtain authorization from the Office of Environmental Services, Permits Division, before assigning respiratory protection factors in excess of those specified in Appendix A. The department may authorize a licensee or registrant to use higher protection factors on receipt of an application that:

B.2.a. - D. ...



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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:972 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2577 (November 2000), LR 29:

## **Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations**

### **Subchapter A. Equipment Control**

#### **§543. Radiation Survey Instruments**

A. ...

B. Each radiation survey instrument shall be calibrated:

1. at energies appropriate for use and at intervals not to exceed six months and after each instrument servicing;

B.2. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2581 (November 2000), LR 27:1233 (August 2001), LR 29:

#### **§544. Leak Testing, Repair, Tagging, Opening, Modification, Replacement, and Records of Receipt and Transfer of Sealed Sources**

A. ...

B. Each sealed source, except an energy compensation source (ECS), shall be tested for leakage at intervals not to exceed six months. In the absence of a certificate from a transferor that a test has been made within the six-month period prior to the transfer, the sealed source shall not be put into use until tested.

C. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2582 (November 2000), LR 27:1233 (August 2001), LR 29:

### **Subchapter B. Personal Radiation Safety Requirements for Radiographers**

#### **§575. Training and Testing**

A. - C.2. ...

D. Each licensee or registrant shall conduct a program of internal audits, not to exceed every six months, to ensure that the Radiation Protection Regulations (LAC 33:XV), Louisiana radioactive material license conditions, and the licensee's or registrant's operating and emergency procedures are followed by each radiographer and radiographer trainee. Records of internal audits shall be maintained for review by the department for two consecutive years from the date of the audit. The internal audit program must include observation of the performance of each radiographer and radiographer trainee during actual industrial radiographic operations at intervals not to exceed six months. In those operations where a single individual serves as both

radiographer and RSO, and performs all radiography operations, an internal audit program is not required.

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

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

#### **§577. Personnel Monitoring Control**

A. No licensee or registrant shall permit an individual to act as a radiographer, instructor, or radiographer trainee unless, at all times during radiographic operations, each such individual wears, on the trunk of the body, a direct-reading pocket dosimeter, an alarm ratemeter, and a personnel dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor, except that for permanent radiography facilities where other appropriate alarming or warning devices are in routine use, the wearing of an alarm ratemeter is not required.

B. Pocket dosimeters shall have a range of zero to at least 2 millisieverts (200 millirems) and shall be recharged at least daily or at the start of each shift. Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters. Each personnel dosimeter must be assigned to and worn only by one individual. Pocket dosimeters, or electronic personal dosimeters, shall be checked for correct response to radiation at periods not to exceed one year. Acceptable dosimeters shall read within  $\pm 20$  percent of the true radiation exposure. Records of positive dosimeter response shall be maintained for three years by the licensee or registrant for department inspection.

C. Each personnel dosimeter shall be processed and evaluated by an accredited NVLAP processor and assigned to and worn by only one individual. Personnel dosimeters must be replaced at periods not to exceed one month. After replacement, each personnel dosimeter must be processed as soon as possible.

D. Direct reading dosimeters, such as electronic personal dosimeters or pocket dosimeters, shall be read and exposures recorded at least daily with use at the beginning and end of each shift, and records must be maintained for three years or until the Office of Environmental Services, Permits Division, authorizes their disposition.

E. If an individual's pocket dosimeter is discharged beyond its range (i.e., goes "off-scale"), or an individual's electronic pocket dosimeter reads greater than 2 millisieverts (200 millirems) and the possibility of radiation exposure cannot be ruled out as the cause, industrial radiographic operations by that individual shall cease and the individual's personnel dosimeter shall be sent for processing immediately. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination must be recorded and maintained indefinitely or until the Office of Environmental Services, Permits Division, authorizes their disposition.

F. Records of the pocket dosimeter readings shall be maintained for inspection by the department for three consecutive years. If the dosimeter readings were used to determine external radiation dose, the records shall be maintained indefinitely or until the Office of Environmental Services, Permits Division, authorizes their disposition.

G. If a personnel dosimeter is lost or damaged, the worker shall cease work immediately until a replacement personnel dosimeter is provided and the exposure is calculated for the time period from issuance to loss or damage of the personnel dosimeter. The results of the calculated exposure and the time period for which the personnel dosimeter was lost or damaged must be recorded and maintained indefinitely or until the Office of Environmental Services, Permits Division, authorizes their disposition.

H. - H.3. ...

4. be calibrated at periods not to exceed one year for correct response to radiation: acceptable ratemeters must alarm within  $\pm 20$  percent of the true radiation dose rate. Records of calibrations shall be maintained for three years.

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

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

## **Chapter 17. Licensing and Radiation Safety Requirements for Irradiators**

### **§1739. Personnel Monitoring**

A. Irradiator operators shall wear a personnel dosimeter while operating a panoramic irradiator or while in the area around the pool of an underwater irradiator. The personnel dosimeter processor shall be accredited by the National Voluntary Laboratory Accreditation Program for high energy photons in the normal and accident dose ranges in accordance with LAC 33:XV.430.C. Each personnel dosimeter shall be assigned to and worn by only one individual. Film badges shall be processed at least monthly, and other personnel dosimeters shall be processed at least quarterly.

B. Other individuals who enter the radiation room of a panoramic irradiator shall wear a dosimeter, which may be a pocket dosimeter. For groups of visitors, only two people who enter the radiation room are required to wear dosimeters. If pocket dosimeters are used to meet the requirements of this Subsection, a check of their response to radiation shall be done at least annually. Acceptable dosimeters shall read within  $\pm 30$  percent of the true radiation dose.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2118 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:

### **§1755. Records and Retention Periods**

A. - A.2. ...

3. a copy of the current operating and emergency procedures required by LAC 33:XV.1737 until superseded or the Office of Environmental Services, Permits Division, terminates the license. Records of the radiation safety officer's review and approval of changes in procedures, as required by LAC 33:XV.1737.C.3, shall be retained for three years from the date of the change;

A.4. - B. ...

1. a copy of the license, the license conditions, documents incorporated into the license by reference, and amendments thereto until superseded by new documents or until the Office of Environmental Services, Permits Division, terminates the license for documents not superseded;

2. personnel dosimeter evaluations required by LAC 33:XV.1739 until the Office of Environmental Services, Permits Division, terminates the license;

3. - 5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2120 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2604 (November 2000), LR 29:

## **Chapter 20. Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies**

### **§2003. Definitions**

A. The following definitions apply to these terms as used in this Chapter.

*Energy Compensation Source (ECS)* Ca small sealed source, with an activity not exceeding 3.7 MBq (100 microcuries), used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

\*\*\*

*Tritium Neutron Generator Target Source* Ca tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:

### **§2014. Leak Testing of Sealed Sources**

A. ...

B. Method of Testing. Tests for leakage shall be performed only by persons specifically authorized to perform such tests by the Office of Environmental Services, Permits Division, the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state. The test sample shall be taken from the surface of the source, source holder, or from the surface of the device in which the source is stored

or mounted and on which one might expect contamination to accumulate. The test sample shall be analyzed for radioactive contamination, and the analysis shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of radioactive material on the test sample.

C. Interval of Testing

1. Each sealed source of radioactive material, except an energy compensation source (ECS), shall be tested at intervals not to exceed six months. In the absence of a certificate from a transferor indicating that a test has been made prior to the transfer, the sealed source shall not be put into use until tested. If, for any reason, it is suspected that a sealed source may be leaking, it shall be removed from service immediately and tested for leakage as soon as practical.

2. Each ECS that is not exempt from testing in accordance with Subsection E of this Section must be tested at intervals not to exceed three years. In the absence of a certificate from a transferor that a test has been made within the three years before the transfer, the ECS may not be used until tested.

D. Leaking or Contaminated Source. If the test reveals the presence of 0.005 microcurie (185 Bq) or more of leakage or contamination, the licensee shall immediately withdraw the source from use and shall cause it to be decontaminated, repaired, or disposed of in accordance with these regulations. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if it is contaminated, have it decontaminated or disposed of in accordance with these regulations. A report describing the equipment involved, the test results, any contamination that resulted from the leaking source, and the corrective action taken shall be filed in writing with the Office of Environmental Compliance within five days of receiving the test results or within 30 days of discovery of a leaking or contaminated source.

E. ...

1. hydrogen-3 (tritium) sources;

2. - 4. ...

5. sources of alpha- or neutron-emitting radioactive material with an activity of 10 microcuries (0.370 MBq) or less.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2604 (November 2000), LR 29:

**§2017. Design, Performance, and Certification Criteria for Sealed Sources Used in Downhole Operations**

A. Each sealed source, except those containing radioactive material in gaseous form, used in downhole operations and manufactured after October 20, 1988, shall be certified by the manufacturer, or other testing organization acceptable to the Office of Environmental Services, Permits Division, to meet the following minimum criteria:

A.1. - B. ...

C. Each sealed source, except those containing radioactive material in gaseous form, used in downhole

operations after October 20, 1988, shall be certified by the manufacturer, or other testing organization acceptable to the Office of Environmental Services, Permits Division, as meeting the sealed source performance requirements for oil well-logging as contained in the American National Standard N542, "Sealed Radioactive Sources, Classification," in effect on October 20, 1987.

D. Certification documents shall be kept and maintained for inspection by the Office of Environmental Services, Permits Division, for a period of two years after source disposal. If the source is abandoned downhole, the certification documents shall be maintained until the Office of Environmental Services, Permits Division, authorizes disposition in writing.

E. Sealed Source Used in Well-Logging Applications

1. A licensee may use a sealed source in well-logging applications if the sealed source:

a. is doubly encapsulated;

b. contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and

c. meets the following requirements:

i. for a sealed source manufactured on or before July 14, 1989, the requirements of USASI N5.10-1968, "Classification of Sealed Radioactive Sources," or the requirements in Subsection C or D of this Section; or

ii. for a sealed source manufactured after July 14, 1989, the oil well-logging requirements of ANSI/HPS N43.6-1997, "Sealed Radioactive Sources? Classification"; or

iii. for a sealed source manufactured after July 14, 1989, the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(a). Temperature. The test source must be held at -40 °C for 20 minutes, 600 °C for 1 hour, and then be subjected to a thermal shock test with a temperature drop from 600 °C to 20 °C within 15 seconds.

(b). Impact Test. A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.

(c). Vibration Test. The test source must be subjected to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

(d). Puncture Test. A 1 gram hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(e). Pressure Test. The test source must be subjected to an external pressure of  $1.695 \times 10^7$  pascals (24,600 pounds per square inch absolute).

2. The requirements in Subparagraphs E.1.a-c of this Section do not apply to sealed sources that contain licensed material in gaseous form.

3. The requirements in Subparagraphs E.1.a-c of this Section do not apply to energy compensation sources (ECSs). ECSs must be registered with the Office of Environmental Services, Permits Division.

F. Energy Compensation Source. The licensee may use an energy compensation source (ECS) that is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 3.7 MBq (100 microcuries).

1. For well-logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of LAC 33:XV.2014, 2015, and 2016.

2. For well-logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Subsections E and H of this Section and LAC 33:XV.2014, 2015, 2016, and 2051.

**G Tritium Neutron Generator Target Source**

1. Use of a tritium neutron generator target source, containing quantities not exceeding 1,110 MBq (30 curies) and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of these regulations except Subsections E and F of this Section and LAC 33:XV.2051.

2. Use of a tritium neutron generator target source, containing quantities exceeding 1,110 MBq (30 curies) or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of these regulations except Subsections E and F of this Section.

H. Use of a Sealed Source in a Well Without a Surface Casing. The licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure for reducing the probability of the source becoming lodged in the well. The procedure must be approved by the Office of Environmental Services, Permits Division.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2605 (November 2000), LR 29:

**Subchapter A. Requirements for Personnel Safety**

**§2022. Personnel Monitoring**

A. No licensee or registrant shall permit any individual to act as a logging supervisor or to assist in the handling of sources of radiation unless each such individual wears a personnel dosimeter. Each personnel dosimeter shall be assigned to and worn by only one individual. Film badges must be replaced at least monthly, and other personnel dosimeters shall be processed at least quarterly. After replacement, each personnel dosimeter must be promptly processed. The processor of a personnel dosimeter shall be accredited by the National Voluntary Laboratory Accreditation Program.

B. Personnel monitoring records shall be maintained for inspection until the Office of Environmental Services, Permits Division, authorizes disposition.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2605 (November 2000), LR 29:

**Subchapter B. Precautionary Procedures in Logging and Subsurface Tracer Operations**

**§2036. Uranium Sinker Bars**

A. The licensee may use a uranium sinker bar in well-logging applications only if it is legibly impressed with the words "CAUTION? RADIOACTIVE DEPLETED URANIUM" AND "NOTIFY CIVIL AUTHORITIES [OR COMPANY NAME] IF FOUND."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

**Subchapter D. Notification**

**§2051. Notification of Incidents, Abandonment, and Lost Sources**

A. - B.1. ...

2. notify the Office of Environmental Compliance immediately by telephone at (225)765-0160 if radioactive contamination is detected at the surface or if the source appears to be damaged and provide a follow-up written report to the office within 30 days of detection.

C. - C.3.g. ...

h. information contained on the permanent identification plaque;

i. the names of state agencies receiving a copy of this report; and

j. the immediate threat to public health and safety justification for implementing abandonment if prior Office of Environmental Compliance approval was not obtained because the licensee believed there was an immediate threat to public health and safety.

D. Whenever a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations, and a permanent plaque (see Appendix B of this Chapter) for posting the well or well-bore. This plaque shall:

1. - 2.c. ...

d. the well name and well identification number(s) or other designation;

e. the sealed source(s) by radionuclide and quantity of activity;

f. the source depth and the depth to the top of the plug; and

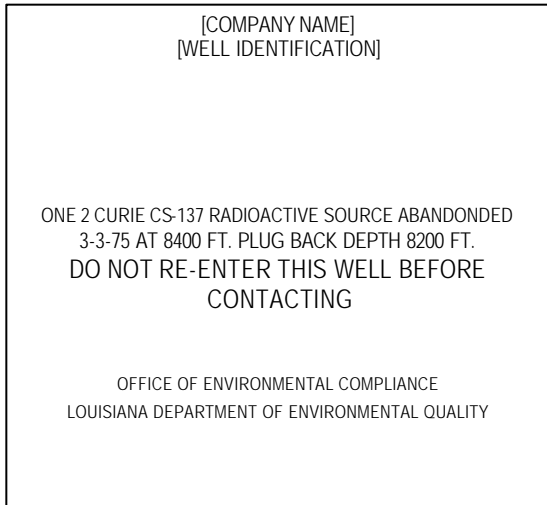
g. an appropriate warning, depending on the specific circumstances of each abandonment. Appropriate warnings may include "DO NOT DRILL BELOW PLUG BACK DEPTH"; "DO NOT ENLARGE CASING"; or "DO NOT RE-ENTER THE HOLE," followed by the words, "BEFORE CONTACTING THE OFFICE OF ENVIRONMENTAL COMPLIANCE, LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY."

E. The licensee shall notify the Office of Environmental Compliance of the theft or loss of radioactive materials, radiation overexposure, excessive levels and concentrations of radiation or radioactive materials, and certain other accidents as required by LAC 33:XV.341, 485, 486, and 487.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 21:555 (June 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2606 (November 2000), LR:29:

**Appendix B**  
 Example of Plaque for Identifying Wells  
 Containing Sealed Sources of Radioactive  
 Material Abandoned Downhole



The size of the plaque should be convenient for use on active or inactive wells, e.g., a 7-inch square that is 3 mm (1/8-inch) thick. Letter size of the word "CAUTION" should be approximately twice the letter size of the rest of the information, e.g., 1/2-inch and 1/4-inch letter sizes, respectively.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2606 (November 2000), LR 29:

A public hearing will be held on July 25, 2003, at 1:30 p.m. in the Galvez Building, Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399. All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP032.\* Such comments must be received no later than July 25, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or by e-mail to lynnw@ldeq.org. The comment

period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of RP032\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>. It is anticipated that the DEQ Headquarters move from 7290 Bluebonnet Boulevard to 602 N. Fifth Street, Baton Rouge, LA, will be completed by mid-July.

James H. Brent, Ph.D.  
 Assistant Secretary

0306#026

**NOTICE OF INTENT**

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

Radiation Protection

(LAC 33:XV.212, 320, 545, 590, 2504, and 2506)(RP033)

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 Radiation Protection regulations, LAC 33:XV.212, 320, 545, 590, 2504, and 2506 (Log #RP033).

The proposed Rule adds notification requirements regarding modification of any license information, clarifies that a quarterly physical inventory is required on sealed sources and registered devices that are received or possessed under the license or registration, adds the use of collimators on xray devices, corrects the title of LAC 33:XV.212, clarifies the need to file a renewal application with payment of fees, and clarifies that the fee will also allow reciprocal recognition of a registration. The amendments will clarify requirements that are necessary to ensure the health and safety of the persons conducting work with radiation equipment and make the regulations consistent with media program needs. The basis and rationale for this proposed Rule are to protect the health and safety of those persons working in the field of radiation.

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 XV. Radiation Protection**

**Chapter 2. Registration of Radiation Machines and Facilities**

**§212. Reciprocal Recognition of Out-of-State Radiation Machines**

A. - B.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2566 (November 2000), LR 29:

**Chapter 3. Licensing of Radioactive Material**  
**Subchapter B. Licenses**

**§320. Types of Licenses**

A. Licenses for radioactive materials are of two types: general and specific.

1. General licenses provided in this Chapter are effective without the filing of application with the Office of Environmental Services, Permits Division or the issuance of licensing documents to the particular persons, although the filing of certain information with the Office of Environmental Services, Permits Division may be required by the particular general license. The general licensee is subject to all other applicable portions of these regulations and to any limitations of the general license. The licensee shall notify the Office of Environmental Services, Permits Division in writing before making any change that would render the information for license no longer accurate.

2. Specific licenses require the submission of an application to the Office of Environmental Services, Permits Division and the issuance of a licensing document by the administrative authority. The licensee is subject to all applicable portions of these regulations as well as to any limitations specified in the licensing document. The licensee shall notify the Office of Environmental Services, Permits Division in writing before making any change that would render the information contained in the application for license no longer accurate.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2566 (November 2000), LR 29:

**Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations**

**Subchapter A. Equipment Control**

**§545. Quarterly Inventory**

A. Each licensee and registrant shall conduct a quarterly physical inventory to account for all sealed sources and licensed or registered devices received or possessed under his or her license or registration, including devices containing depleted uranium. The records of the inventories shall be maintained for inspection by the department for at

least three consecutive years from the date of the inventory and shall include the quantities and kinds of radioactive material, the location of sealed sources and/or devices, the date of the inventory, the name of individual(s) performing the inventory, the manufacturer, the model number, and the serial number.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2582 (November 2000), LR 27:1233 (August 2001), LR 29:

**Subchapter C. Precautionary Procedures in Radiographic Operations**

**§590. Specific Requirements for Radiographic Personnel Performing Industrial Radiography**

A. - B. ...

C. Collimators shall be used in industrial radiographic operations that use crank-out devices and/or xray devices, except when physically impossible.

D. - F. ...

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

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

**Chapter 25. Fee Schedule**

**§2504. Application Fees**

A. ...

B. Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. License renewal applications must be filed in accordance with LAC 33:XV.333.A.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:718 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:

**§2506. Reciprocal Agreements C Licenses and Registrants**

A. Persons operating within Louisiana under the provisions of LAC 33:XV.212 or LAC 33:XV.390 shall submit to the Office of Environmental Services, Permits Division the annual fee of the applicable category before the first entry into the state. The fee will allow reciprocal recognition of the license or registration for one year from the date of receipt.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:718 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2607 (November 2000), LR 29:

**NOTICE OF INTENT**

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

Site-Specific Criteria Adjustment for Bayou  
Chinchuba and Tchefuncte River Wetlands  
(LAC 33:IX.1123)(WQ049)

A public hearing will be held on July 25, 2003, at 1:30 p.m. in the Galvez Building, Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP033. Such comments must be received no later than August 1, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or by e-mail to lynnw@ldeq.org. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of RP033.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>. It is anticipated that the DEQ Headquarters move from 7290 Bluebonnet Boulevard to 602 N. Fifth Street, Baton Rouge, LA, will be completed by mid-July.

James H. Brent, Ph.D.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Radiation Protection**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no expected implementation costs or savings to state or local governmental units by the proposed rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs or economic benefits to directly affect persons or non-governmental groups by the proposed rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated effect on competition and employment by the proposed rule.

James H. Brent, Ph.D.  
Assistant Secretary  
0306#027

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.1123 (Log #WQ049).

The Rule is intended to set site-specific criteria for wetlands in the Bayou Chinchuba and Tchefuncte River watersheds. The included wetlands will receive secondarily treated effluent from the City of Mandeville. This rule will result in the creation of two new subsegments: 040805 (Chinchuba Swamp Wetland) and 040806 (East Tchefuncte Marsh Wetland). Tree, shrub, and/or marsh grass productivity are determined to be the appropriate criteria. Designated uses are secondary contact recreation and fish and wildlife propagation. General and numerical criteria not specifically excepted in LAC 33:IX.1123.Table 3 shall apply. This action is required to establish protective site-specific criteria and designated uses for the affected Bayou Chinchuba and Tchefuncte River wetlands (subsegments 040805 and 040806) in Louisiana's water quality standards. A Use Attainability Analysis (UAA) was conducted in accordance with state and federal water quality regulations, policies, and guidance to develop site-specific criteria and designated uses for the wetland.

Analyses of use attainability are conducted by the department to determine the uses and criteria an individual water body can attain. According to the regulations, a UAA is defined as "a structured scientific assessment of the factors (chemical, physical, biological, and economic) affecting the attainment of designated uses in a water body." (See 40 CFR 131.3(g) and LAC 33:IX.1105.) The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to establish site-specific uses and criteria. The basis and rationale for the proposed rule are to establish site-specific criteria and designated uses for the affected Bayou Chinchuba and Tchefuncte River wetlands (subsegments 040805 and 040806), developed as a result of the UAA conducted for the site.

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 11. Surface Water Quality Standards  
§1123. Numerical Criteria and Designated Uses**

A. - C.2. ...

3. Designated Uses. The following are the category definitions of Designated Uses that are used in Table 3 under the subheading "DESIGNATED USES."

A – Primary Contact Recreation

B – Secondary Contact Recreation  
C – Propagation of Fish and Wildlife  
L – Limited Aquatic Life and Wildlife Use  
D – Drinking Water Supply  
E – Oyster Propagation  
F – Agriculture  
G – Outstanding Natural Resource Waters

Numbers in brackets, e.g. [1], refer to endnotes listed at the end of the table.

<b>Table 3. Numerical Criteria and Designated Uses</b>									
A - Primary Contact Recreation; B - Secondary Contact Recreation; C - Propagation of Fish and Wildlife; D - Drinking Water Supply; E - Oyster Propagation; F - Agriculture; G - Outstanding Natural Resource Waters; L - Limited Aquatic Life and Wildlife Use									
Code	Stream Description	Designated Uses	Criteria						
			CL	SO4	DO	pH	BAC	°C	TDS
	ATCHAFALAYA RIVER BASIN (01)								
*** [See Prior Text In 010101 - 031201]									
	LAKE PONTCHARTRAIN BASIN (04)								
*** [See Prior Text In 040101 - 040804]									
040805	Chinchuba Swamp Wetland – forested wetland located 0.87 miles southwest of the City of Mandeville, southeast of the Sanctuary Ridge, and north of Lake Pontchartrain	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
040806	East Tchefuncte Marsh Wetland – fresh water and brackish marsh located just west of the City of Mandeville, bounded on the south by Lake Pontchartrain, the west by the Tchefuncte River, the north by Highway 22, and the east by the Sanctuary Ridge	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
*** [See Prior Text In 040901 - 120806]									

**ENDNOTES:**

[1] – [22] ...

[23] Designated Naturally Dystrophic Waters Segment. The following criteria apply: no more than 20 percent reduction in the total above-ground wetland productivity as measured by tree, shrub, and/or marsh grass productivity.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1123 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division LR 25:2401 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:

A public hearing will be held on July 25, 2003, at 1:30 p.m. in the Galvez Building, Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ049. Such comments must be received no later than August 1, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation

Development Section, Box 4314, Baton Rouge, LA 70821-4314 or by e-mail to lynnw@ldeq.org. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of WQ049.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>. It is anticipated that the DEQ Headquarters move from 7290 Bluebonnet Boulevard to 602 N. Fifth Street, Baton Rouge, LA, will be completed by mid-July.

James H. Brent, Ph.D.  
Assistant Secretary



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Site-Specific Criteria Adjustment for  
Bayou Chinchuba and Tchefuncte River Wetlands**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No significant effect of this proposed rule on state or local governmental expenditures is anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No significant effect on state or local governmental revenue collections is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No significant costs and/or economic benefits to directly affected persons or non-governmental groups are anticipated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No significant effect on competition or employment is anticipated.

James H. Brent, Ph.D.  
Assistant Secretary  
0306#030

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Waste Tire Fee Reporting (LAC 33:VII.10519)(SW036)**

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.10519 (Log #SW036).

The proposed Rule cleans up and clarifies existing language, including identification of classes of dealers affected by the Rule, requires the exclusive use of Form WT02, and clarifies the requirement for submittal of Form WT02 on or before the twentieth of every month, regardless of whether or not any fees have been collected. Review of the existing regulatory language revealed a possible lack of clarity regarding reporting requirements. The basis and rationale for this Rule are to clarify the existing waste tire fee reporting requirements.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33  
ENVIRONMENTAL QUALITY  
Part VII. Solid Waste  
Subpart 2. Recycling**

**Chapter 105. Waste Tires**

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

A. - C. ...

D. Each dealer of passenger/light truck tires, medium truck tires, and off-road tires shall remit all waste tire fees collected as required by LAC 33:VII.10535.B and C to the department on a monthly basis on or before the twentieth day following the month during which the fees were collected. The fees shall be remitted to the Office of Management and Finance, Financial Services Division. Each such dealer shall also submit a Monthly Waste Tire Fee Report (Form WT02, available from the Office of Management and Finance, Financial Services Division), to the Office of Management and Finance, Financial Services Division, on or before the twentieth day of each month for the previous month's activity, including months in which no fees were collected. Each tire dealer required to make a report and remit the fee imposed by this Section shall keep and preserve records as may be necessary to readily determine the amount of fee due. Each such dealer shall maintain a complete record of the quantity of tires sold, together with tire sales invoices, purchase invoices, inventory records, and copies of each Monthly Waste Tire Fee Report for a period of no less than three years. These records shall be made available for inspection by the administrative authority at all reasonable hours.

E. - O. ...

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

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

A public hearing will be held on July 25, 2003, at 1:30 p.m. in the Galvez Building, Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by SW036. Such comments must be received no later than August 1, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or by e-mail to [lynnw@ldeq.org](mailto:lynnw@ldeq.org).

Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of SW036.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>. It is anticipated that the DEQ Headquarters move from 7290

Bluebonnet Boulevard to 602 N. Fifth Street, Baton Rouge, LA, will be completed by mid-July.

James H. Brent, Ph.D.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Waste Tire Fee Reporting**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no implementation costs expected.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units.  
The rule should ensure more complete reporting from all affected dealers, helping to assure the proper collection of fees.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This rule merely clarifies an existing reporting requirement and will not change existing costs/benefits.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no effect on competition or employment.

James H. Brent, Ph.D.  
Assistant Secretary  
0306#028

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT  
Office of the Governor  
Division of Administration  
Office of Group Benefits**

**EPO Plan of Benefits CEmployer Responsibility  
(LAC 32:V.417)**

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the EPO Plan Document relative to employer responsibility with respect to re-employed retirees in order to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active employment.

Accordingly, OGB hereby gives notice of intent to adopt the following Rule to become effective upon promulgation.

The proposed Rule has no known impact on family formation, stability, or autonomy.

**Title 32**

**EMPLOYEE BENEFITS**

**Part V. Exclusive Provider (EPO) Plan of Benefits**

**Chapter 4. Uniform Provisions**

**§417. Employer Responsibility**

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A *participant employer* shall immediately inform the OGB Program whenever a retiree with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any participant employer that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB, then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1817 (October 1999), amended LR 29:

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Friday, July 25, 2003.

A. Kip Wall  
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: EPO Plan of Benefits  
Employer Responsibility**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated by the Program's consulting actuary, Milliman, USA, that this proposed Rule should result in a reduction of \$7,000 in FY 2003/2004 for administrative costs due to Medicare Second Payor clarifications, and a reduction of \$10,000 for FY 2004/2005 and subsequent fiscal years. It is anticipated that \$3,000 in printing costs will be incurred with the publishing of this Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule will revise and amend the EPO plan document to avoid sanctions or penalties with the administration of claims for Medicare covered employees returning to employment. It is estimated by OGB's consulting actuary, Milliman, USA, that this benefit modification will result in additional revenue of \$578,000 to OGB for Fiscal Year 2003/2004, and \$746,000 in FY 2004/2005 and subsequent fiscal years.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This Rule change will impact those EPO members (approximately 100) that retire and maintain coverage with OGB. Those retirees that maintain coverage with OGB and return to work as an active state employee will now be mandated to keep their eligible coverage as a retiree with their original employing agency continuing to pay the state share of these benefits. These members will be required to pay rates for retirees returning to active employment which are identical to the retiree without medicare rates.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

A. Kip Wall  
Chief Executive Officer  
0306#044

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Office of Group Benefits**

PPO Plan of Benefits C Employer Responsibility  
(LAC 32:III.417)

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the PPO Plan Document relative to employer responsibility with respect to re-employed retirees in order to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active employment.

Accordingly, OGB hereby gives notice of intent to adopt the following Rule to become effective upon promulgation.

The proposed Rule has no known impact on family formation, stability, or autonomy.

**Title 32**

**EMPLOYEE BENEFITS**

**Part III. Preferred Provider (PPO) Plan of Benefits**

**Chapter 4. Uniform Provisions**

**§417. Employer Responsibility**

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary

documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A participant employer shall immediately inform the OGB Program whenever a *retiree* with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any *participant employer* that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB, then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1837 (October 1999), amended LR 29:

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Friday, July 25, 2003.

A. Kip Wall  
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: PPO Plan of Benefits C Employer  
Responsibility**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated by the Program's consulting actuary, Milliman, USA, that this proposed Rule should result in a reduction of \$7,000 in FY 2003/2004 for administrative costs due to Medicare Second Payor clarifications, and a reduction of \$10,000 for FY 2004/2005 and subsequent fiscal years. It is anticipated that \$3,000 in printing costs will be incurred with the publishing of this Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule will revise and amend the PPO plan document to avoid sanctions or penalties with the administration of claims for Medicare covered employees returning to employment. It is estimated by OGB's consulting actuary, Milliman, USA, that this benefit modification will result in additional revenue of \$491,350 to OGB for Fiscal Year 2003/2004, and \$634,000 in FY 2004/2005 and subsequent fiscal years.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This Rule change will impact those PPO members (approximately 100) that retire and maintain coverage with OGB. Those retirees that maintain coverage with OGB and return to work as an active state employee will now be mandated to keep their eligible coverage as a retiree with their original employing agency continuing to pay the state share of these benefits. These members will be required to pay rates for retirees returning to active employment which are identical to the retiree without medicare rates.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

A. Kip Wall  
Chief Executive Officer  
0306#043

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing  
and  
Department of Public Safety and Corrections  
Office of the Secretary**

Administration of Medications to Children  
in Detention Facilities (LAC 22:I.Chapter 5)

Editor's Note: Section 509 is being re-advertised as a Notice of Intent to correct an error upon submission.

The Louisiana State Board of Nursing (herein referred to as the board) and the Department of Public Safety and Corrections (herein referred to as department), pursuant to the authority vested in the board by R.S. 37:918(K), and 15:911 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., hereby promulgate Rules to provide for procedures and training that must be in place before any staff member other than any registered nurse, licensed practical nurse or licensed medical physician can be required to administer medication to children in detention facilities and shelters; to provide for definitions; to provide for the establishment of guidelines for training and the administration of medication; to provide for the rights and responsibilities of employees assigned to detention facilities relative to the administration of medication; and to provide for related matters. The Rules are set forth below.

**Title 22  
CORRECTIONS, CRIMINAL JUSTICE  
AND LAW ENFORCEMENT**

**Chapter 5. Administration of Medications to  
Children in Detention Facilities**

**§509. Role of the Professional Staff in the  
Administration of Medications**

A. Either a registered nurse with a current Louisiana license to practice in accordance with The Nurse Practice Act and the board's rules, specifically LAC 46:XLVII.3701-3703 and 3901-3915, or a physician shall be responsible for

the delegation of medication administration by trained unlicensed detention center personnel. The duties of the professional staff regarding the administration of medication, include, but are not limited to the following:

1. the development of policies and procedures regarding administration of medication in detention centers, in consultation with the detention center's director;
2. supervision of the implementation of medication administration policies to ensure the safety, health, and welfare of the juveniles in collaboration with the director and appropriate staff;
3. verification that the following conditions have been met before requiring unlicensed trained personnel to administer a medication to a juvenile:
  - a. that the health status of the juvenile has been assessed to determined that the administration of medication can be safely delegated;
  - b. only oral, pre-measured aerosols for inhalation, topical medications, and emergency medications are administered by unlicensed trained personnel;
  - c. child specific training has been provided;
  - d. except in life-threatening situations, unlicensed trained employees are not allowed to administer injectable medications;
  - e. controlled substances are administered only after authorization, and with additional training, supervision and documentation;
4. developing and implementing procedures for:
  - a. handling, storing, and disposing of medication;
  - b. missing (stolen) medication;
5. training unlicensed personnel to administer medications. The six hours of general training include at minimum:
  - a. legal role differentiation in medication delivery;
  - b. classification of medications and general purposes of each;
  - c. proper procedures for administration of medication;
  - d. handling, storage, and disposal of medications;
  - e. appropriate and correct record keeping;
  - f. appropriate actions when unusual circumstances occur;
  - g. appropriate use of resources;
6. child specific training includes at minimum:
  - a. desired and adverse effects of the medication;
  - b. recognition and response to an emergency;
  - c. review of the individual's medication;
  - d. observation of the juvenile;
  - e. unique individual requirements for administration of medication;
7. additional training may be required as follows:
  - a. handling and administering controlled substances;
  - b. measuring growth, taking vital signs, and other specific procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1785 (August 2002), amended LR 29:

## Family Impact Statement

In accordance with the Administrative Procedures Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Louisiana State Board of Nursing and the Department of Public Safety and Corrections hereby provide the Family Impact Statement.

Adoption of these Rules by the Louisiana State Board of Nursing and the Department of Public Safety and Corrections regarding the administration of medications to children in detention facilities and shelters by staff other than registered nurses or licensed medical personnel 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.

All interested persons are invited to submit written comments on the proposed Rules. Such comments must be submitted no later than July 30, 2003, at 4:30 p.m., to George White, Deputy Assistant Secretary of the Office of Youth Development, Department of Public Safety and Corrections, Post Office Box 94304 Capitol Station, Baton Rouge, Louisiana 70804-9304.

Barbara Morvant, MN, RN  
Executive Director  
and  
Richard L. Stalder  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Administration of Medications to Children in Detention Facilities

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings. Act 502 of the 2001 Regular Session requires training of unlicensed employees so they can administer oral and topical medications to children in detention facilities. This training will be conducted by in-house medical personnel with existing funds.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated effects on revenue collections for the above stated reasons.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Rule does not impose any additional costs to directly affected persons or non-governmental groups.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment.

Barbara L. Morvant  
Executive Director  
Robert B. Barbor  
Executive Counsel  
0306#024

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Board of Nursing

Definitions (LAC 46:XLVII.3503)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing (board) pursuant to the authority vested in the board by R.S. 37:918 and R.S. 37:919 intends to adopt Rules amending the Professional and Occupational Standards pertaining to definitions. The proposed amendments of the Rules are set forth below.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLVII. Nurses Subpart 2. Registered Nurses

#### Chapter 35. Nursing Education Programs §3503. Definitions

\*\*\*

*Appropriate Accrediting Body* the regional institutional accrediting agency for institutions of higher education (degree granting) recognized by the National Advisory Committee on Institutional Quality and Integrity, United States Department of Education.

\*\*\*

*National Nursing Accrediting Body* the National League for Nursing Accrediting Commission and the Commission on Collegiate Nursing Education are recognized by the board as appropriate national accrediting agencies for programs in nursing.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:913 and R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:184 (April 1977), amended by the Department of Health and Hospitals, Board of Nursing, LR 17:1208 (December 1991), LR 24:1293 (July 1998), LR 26:2789 (December 2000), repromulgated LR 27:851 (June 2001), amended LR 29:

#### Family Impact Statement

The Louisiana State Board of Nursing hereby issues this Family Impact Statement: The proposed Rule related to the Board's appointing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S. 49:972.

Interested persons may submit written comments on the proposed Rules to Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 N. Causeway Blvd, Suite 501, Metairie, LA 70002. The deadline for receipt of all written comments is 4:30 p.m. on July 10, 2003.

Barbara L. Morvant  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Definitions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Only implementation cost is for the publication of the Rule change in the Louisiana Register estimated to be \$45.00 in FY 03.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There is no estimated cost or economic benefit to affected persons or non-governmental groups. This proposed Rule is an addition to provide for clarification of definitions that board records support as the practice of the board.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no anticipated effect on competition and employment.

Barbara L. Morvant  
Executive Director  
0306#023

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 EligibilityCApplication Date**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provision 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* by reference (*Louisiana Register, Volume 22, Number 5*). The May 20, 1996 Rule was later repromulgated to correct an error in the original text of the Rule (*Louisiana Register Volume 22 Number 7*). Section G-700 of the manual defines the term "application date" as the date that any agency representative authorized by the Medicaid Program is first contacted either in person, by telephone or by written request to initiate the eligibility determination. The bureau proposes to amend the definition of the application date to improve the timely processing of Medicaid applications and to be consistent with the policy used in adjoining states.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the definition of the application date contained in Section G of the July 20, 1996 Rule as follows:

A. The application date shall be the date the signed Medicaid application is received in the local Medicaid office or in an agency representative's office.

B. The date of receipt shall be protected as the certified date of application, as determined by Subsection A above.

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

1. The Effect on the Stability of the Family. The stability of the family will remain unchanged.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. Parental authority and rights will not be effected.

3. The Effect on the Functioning of the Family. This proposal will have no effect on family functioning.

4. The Effect on Family Earnings and Family Budget. Since we anticipate no financial impact, there will be no effect on family earnings and budgeting.

5. The Effect on the Behavior and Personal Responsibility of Children. There will be no effect on the behavior or personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The agency and its representatives involved in the Medicaid eligibility determination process are capable of performing the function. This family will not have to make functional adjustments if the change is made.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, July 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, 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 EligibilityCApplication Date**

- 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 2003-2004, 2004-2005 and 2005-2006. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that the implementation of this proposed Rule will not impact federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed Rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups. This proposed Rule clarifies the date of application for the purpose of determining Medicaid eligibility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0306#057

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  
Temporary Assistance to Needy Families  
Elimination of Work Related Sanctions

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently exercises an option in the State Plan under Title XIX of the Social Security Act that terminates Medicaid coverage to individuals whose cash assistance was terminated due to failure to meet Temporary Assistance to Needy Families (TANF) work requirements, with the exception of pregnant women and children.

In order to provide access to health care and to reduce financial hardship on low income families, the department proposes to eliminate the consideration of TANF work requirements in determining Medicaid eligibility.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing eliminates the consideration of Temporary Assistance to Needy Families work requirements in determining Medicaid eligibility.

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule will have a positive impact on family functioning, stability, and autonomy, as described in R.S. 49:972. The proposed Rule will allow low income families to retain health care coverage under the Medicaid program.

1. The Effect on the Stability of the Family. The proposed Rule will contribute to the stability of the family by increasing the availability of health care coverage to low income families, whose financial needs were removed from the FITAP grant for failure to cooperate with the FIND Work Program.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Parental authority and rights will not be affected.

3. The Effect on the Functioning of the Family. It will enhance the functioning of the family by allowing parent(s), whose financial needs were removed from the FITAP grant, to continue to access treatment that may lead to a healthier parent which would allow him/her to better care for other members.

4. The Effect on Family Earnings and Family Budget. The proposed Rule will result in less impact on the family budget by allowing continuation of payment for medical services for parents whose financial needs were removed from the FITAP grant.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed Rule will have no effect on the behavior and personal responsibility of the children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The agency is capable of performing all functions relative to implementation of the Rule. The family will not have to make any adjustments.

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 Friday, July 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, 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/TANF  
Elimination of Work Related Sanctions**

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 \$36,923 for SFY 2003-2004, \$49,071 for SFY 2004-2005 and \$50,543 for SFY 2005-2006. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately

\$92,812 for SFY 2003-2004, \$123,351 for SFY 2004-2005 and \$127,052 for SFY 2005-2006.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed Rule would eliminate the consideration of Temporary Assistance to Needy Families (TANF) work requirements in determining Medicaid eligibility. The anticipated economic benefit to directly affected persons is that sanctioned TANF recipients (approximately 93), who would have previously been ineligible, will now have access to Medicaid coverage. It is anticipated that expenditures for medical services rendered to eligible recipients would increase by \$129,735 for SFY 2003-2004, \$172,422 for SFY 2004-2005 and \$177,595 for SFY 2005-2006.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0306#058

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Gaming Control Board**

Code of Conduct of Licensees, Permittees, Casino Operator, and Casino Manager; Methods to Prevent Minors from Gaming Area; Licensees and Permittees; Age Restrictions for the Casino; Surveillance Personnel Employment Provisions; Approval of New Electronic Gaming Devices; Enforcement Actions of the Board (LAC 42:VII.2901, 2915 and 4209; IX.2901, 2935, 4103 and 4209; XIII.2901, 2915, 3304 and 4209)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:VII.2901, 2915, 4209, IX.2901, 2935, 4103, 4209, XIII.2901, 2915, 4209 and to repeal LAC 42:XIII.3304.B in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**

**LOUISIANA GAMING**

**Part VII. Pari-Mutuel Live Racing Facility Slot Machine Gaming**

**Chapter 29. Operating Standards**

**§2901. Code of Conduct of Licensees and Permittees**

A. - B.3. ...

4. Any person required to be found suitable or approved in connection with the granting of any license or permit shall have a continuing duty to notify the division of his/her/its arrest, summons, citation or charge for any criminal offense or violation including D.W.I.; however, minor traffic violations need not be included. All licensees and permittees shall have a continuing duty to notify the division of any fact, event, occurrence, matter or action that may affect the conduct of gaming or the business and financial arrangements incidental thereto or the ability to conduct the activities for which the licensee or permittee is licensed or permitted. Such notification shall be made within fifteen calendar days of the arrest, summons, citation, charge, fact, event, occurrence, matter or action.

B.5. - C.1.j. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:763 (April 2000), amended LR 27:58 (January 2001), amended LR 29:

**§2915. Age Restrictions for the Casino; Methods to Prevent Minors from Gaming Area**

A. No persons under the age of 21 shall:

1. play or be allowed to play any game or gaming device in the designated gaming area;
2. loiter or be permitted to loiter in or about any room, premises, or designated area where any game or gaming device is located;
3. be employed as a gaming employee.

B. The Type A licensee must implement methods to prevent minors from entering the designated gaming area of the eligible facility. Such methods shall be part of the licensee's system of internal controls and shall include, but shall not be limited to the following:

1. posting signs at all entrances to the gaming area notifying patrons that persons under 21 years of age are not permitted to loiter in or about the gaming area. The signs shall be displayed in English, Spanish, and Vietnamese;
2. posting signs or other approved means displaying the date of birth of a person who is 21 years old that date.

C. Type A Licensees shall each quarter report and remit to the division all winnings withheld from customers who are determined to be under the age of 21.

D. The Type A license of any person issued pursuant to the provisions of the act, who is found by the board to have intentionally allowed a person under the age of 21 to play or operate a slot machine, shall be revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:764 (April 2000), amended LR 29:

**Chapter 42. Racetracks: Electronic Gaming Devices  
§4209. Approval of New Electronic Gaming Devices**

A. - A.2.k.x. ...

1. Accounting Meters

i. - iii. ...

iv. The required electronic meters are as follows.

(a). ...

(b). The coin-out meter shall cumulatively count the number of coins that are paid as a result of a win, or credits that are won, or both.

iv.(c). - v. ...

vi. EGDs shall have meters which continuously display the following information relating to the current play or monetary transaction:

(a). - (b). ...

(c). the number of coins paid for a credit cash out or a direct pay from a winning outcome;

1.vi.(d). - n. ...

o. Hopper

i. If a hopper is utilized on an EGD it shall be designed to detect the following and force the EGD into a tilt condition if one of the following occurs:

(a). jammed coins;

(b). extra coins paid out;

(c). hopper runaways;



(d). hopper empty conditions.  
 ii. The EGD control program shall monitor the hopper mechanism, if utilized, for these error conditions in all game states in accordance with this LAC 42:XIII.Chapter 42.

iii. All coins paid from the hopper mechanism, if utilized, shall be accounted for by the EGD including those paid as extra coins during hopper malfunction.

o.iv. - kk. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:721 (April 2000), amended LR 29:

**Part IX. Landbased Casino Gaming**

**Subpart 1. Economic Development and Gaming Corporation**

**Chapter 29. Operating Standards Generally**

**§2901. Code of Conduct of the Casino Operator, Casino Manager, Licensees and Permittees**

A. - A.3. ...

B. Unsuitable Conduct

1. - 3. ...

4. Any person required to be found suitable or approved in connection with the granting of the casino operating contract or any permit shall have a continuing duty to notify the division of his/her/its arrest, summons, citation or charge for any criminal offense or violation including D.W.I.; however, minor traffic violations need not be included. The casino operator, casino manger and any permittee shall have a continuing duty to notify the division of any fact, event, occurrence, matter or action that may affect the conduct of gaming or the business and financial arrangements incidental thereto or the ability to conduct the activities for which the casino operator, casino manager or permittee is approved or permitted. Such notification shall be made within 15 calendar days of the arrest, summons, citation, charge, fact, event, occurrence, matter or action.

B.5. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1950 (October 1999), amended LR 27:59 (January 2001), amended LR 29:

**§2935. Age Restrictions for the Casino; Methods to Prevent Minors from Gaming Area**

A. - A.4. ...

B. The casino operator shall draft and implement policies and procedures designed to satisfy the requirements of this Section, including policies and procedures pertaining to documentation relating to proof of age and the examination of such document by a responsible casino employee or employees of security service providers and to provide suitable security to enforce the policies and procedures. These methods shall be in writing and include, but shall not be limited to:

1. posting signs at all entrances to the gaming area notifying patrons that persons under 21 years of age are not permitted to loiter in or about the gaming area. The signs shall be displayed in English, Spanish, and Vietnamese;

2. posting signs or other approved means displaying the date of birth of a person who is 21 years old that date.

C. The casino operator shall provide copies of all methods implemented in accordance with this Rule to the division and the board. The methods implemented by the casino operator are subject to the approval by the board.

D. The casino operator shall each quarter report and remit to the division all winnings withheld from customers who are determined to be under the age of 21.

AUTHORITY NOTE: Promulgated in accordance with R.S.27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1954 (October 1999), amended LR 29:

**§4103. Enforcement Actions of the Board**

A. - B. ...

C. Penalty Schedule

Penalty Schedule			
Section Reference	Description	Base Fine	Proscriptive Period (Months)
***	***	***	***
2935	Age Restrictions for the Casino	\$10,000	12
***	***	***	***

AUTHORITY NOTE: Promulgated in accordance with R.S.27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1974 (October 1999), amended LR 26:2307 (October 2000), LR 27:2255 (December 2001), repromulgated LR 28:344 (February 2002), amended LR 28:1029 (May 2002), LR 29:

**Chapter 42. Electronic Gaming Devices**

**§4209. Approval of New Electronic Gaming Devices**

A. - A.2.k.x. ...

1. Accounting Meters

i. - iii. ...

iv. The required electronic meters are as follows.

(a). ...

(b). The coin-out meter shall cumulatively count the number of coins that are paid as a result of a win, or credits that are won, or both.

(c) - (h). ...

(i). EGDs shall have meters which continuously display the following information relating to the current play or monetary transaction:

(i). - (ii). ...

(iii). the number of coins paid for a credit cash out or a direct pay from a winning outcome;

1.iv.(i).(iv). - n. ...

o. Hopper

i. If a hopper is utilized on an EGD it shall be designed to detect the following and force the EGD into a tilt condition if one of the following occurs:

(a). jammed coins;

(b). extra coins paid out;

(c). hopper runaways;

(d). hopper empty conditions.

ii. The EGD control program shall monitor the hopper mechanism, if utilized, for these error conditions in all game states in accordance with this LAC 42:XIII.Chapter 42.

iii. All coins paid from the hopper mechanism, if utilized, shall be accounted for by the EGD including those paid as extra coins during hopper malfunction.

o.iv. - 36.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:721 (April 2000), amended LR 29:

**Part XIII. Riverboat Gaming**

**Chapter 29. Operating Standards**

**§2901. Code of Conduct of Licensees and Permittees**

A. - B.3. ...

4. Any person required to be found suitable or approved in connection with the granting of any license or permit shall have a continuing duty to notify the division of his/her/its arrest, summons, citation or charge for any criminal offense or violation including D.W.I.; however, minor traffic violations need not be included. All licensees and permittees shall have a continuing duty to notify the division or any fact, event, occurrence, matter or action that may affect the conduct of gaming or the business and financial arrangements incidental thereto or the ability to conduct the activities for which the licensee or permittee is licensed or permitted. Such notification shall be made within 15 calendar days of the arrest, summons, citation, charge, fact, event, occurrence, matter or action.

B.5. - C.1.j. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 27:60 (January 2001), amended LR 29:

**§2915. Age Restrictions for the Casino; Methods to Prevent Minors from Gaming Area**

A. No persons under the age of 21 shall:

- 1. play or be allowed to play any game or gaming device in the designated gaming area;
- 2. loiter or be permitted to loiter in or about any room, premises, or designated area where any game or gaming device is located;
- 3. be employed as a gaming employee.

B. Each licensee must implement methods to prevent minors from entering the designated gaming area of the eligible facility. Such methods shall be part of the licensee's system of internal controls and shall include, but shall not be limited to the following:

- 1. posting signs at all entrances to the gaming area notifying patrons that persons under 21 years of age are not permitted to loiter in or about the gaming area. The signs shall be displayed in English, Spanish, and Vietnamese;
- 2. posting signs or other approved means displaying the date of birth of a person who is 21 years old that date.

C. Each Licensee shall each quarter report and remit to the division all winnings withheld from customers who are determined to be under the age of 21.

AUTHORITY NOTE: Promulgated in accordance with R.S.4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), amended LR 29:

**Chapter 33. Surveillance and Security**

**§3304. Surveillance Personnel Employment Provisions**

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 27:1559 (September 2001), amended LR 29:

**Chapter 42. Electronic Gaming Devices**

**§4209. Approval of New Electronic Gaming Devices**

A. - 11.j. ...

**12. Accounting Meters**

a. - c. ...

d. The required electronic meters are as follows.

i. ...

ii. The coin-out meter shall cumulatively count the number of coins that are paid as a result of a win, or credits that are won, or both.

d.iii. - e. ...

f. EGDs shall have meters which continuously display the following information relating to the current play or monetary transaction:

i. - ii. ...

iii. the number of coins paid for a credit cash out or a direct pay from a winning outcome;

12.f.iv - 14. ...

**15. Hopper**

a. If a hopper is utilized on an EGD it shall be designed to detect the following and force the EGD into a tilt condition if one of the following occurs:

- i. jammed coins;
- ii. extra coins paid out;
- iii. hopper runaways;
- iv. hopper empty conditions.

b. The EGD control program shall monitor the hopper mechanism, if utilized, for these error conditions in all game states in accordance with this LAC 42:XIII.Chapter 42.

c. All coins paid from the hopper mechanism, if utilized, shall be accounted for by the EGD including those paid as extra coins during hopper malfunction.

15.d. - 36.a. ...

AUTHORITY NOTE: promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:721 (April 2000), amended LR 29:

**Family Impact Statement**

Pursuant to the provisions of R.S. 49:953.A, the Louisiana Gaming Control Board, through its chairman, has considered the potential family impact of adopting amendments to LAC 42:VII.2901, 2915, 4209, IX.2901, 2935, 4103, 4209, XIII.2901, 2915, 4209, and repealing LAC 42:XIII.3304.B.

It is accordingly concluded that adopting amendments to LAC 42:VII.2901, 2915, 4209, IX.2901, 2935, 4103, 4209,

XIII.2901, 2915, 4209, and repealing LAC 42:XIII.3304.B would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 342-2465, and may submit comments relative to these proposed Rules, through July 10, 2003, to 339 Florida Street, Suite 500, Baton Rouge, LA 70801.

Hillary Crain  
Chairman

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Code of Conduct of Licensees, Permittees, Casino Operator, and Casino Manager; Methods to Prevent Minors from Gaming Area; Licensees and Permittees; Age Restrictions for the Casino; Surveillance Personnel Employment Provisions; Approval of New Electronic Gaming Devices; Enforcement Actions of the Board**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
No implementation costs are anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue collections is anticipated, except that expansion of penalties under LAC 42:IX.4103 for violations of IX.2935 may result in an increase in revenue, however the amount of any revenue increase cannot be estimated with any degree of certainty.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
It is not anticipated that Rules will result in economic costs or benefits to directly affected persons. Amendments to LAC 42:VII, IX, and XII.4209 may ultimately result in lower costs to licensees, however the amount of any savings cannot be estimated at this time.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition or employment is estimated. Amendments to Section 4209 will likely increase competition in the slot machine industry.

Hillary J. Crain  
Chairman  
0306#068

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

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

Child Care Assistance Program (CCAP)  
Conditions of Eligibility; Activity Hours; Payment  
(LAC 67:III.5103 and 5109)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 12, Child Care Assistance Program.

In March 2002, the agency adjusted the sliding fee scale for child care assistance recipients in an attempt to serve more low-income families. The agency began paying 100 percent of child care costs for those families whose earnings were well below the federal poverty level and an increased percentage for those families whose earnings were at or just below the poverty level. Additionally, the maximum income standard for program eligibility was raised.

The number of low-income participants served by the Child Care Assistance Program (CCAP) has grown rapidly since these changes were implemented in March 2002, and the cost of servicing these customers has increased proportionately. Pursuant to the authority granted to the department by the Child Care and Development Fund, and in order to implement cost-saving measures to ensure that funding is available to as many low-income families as possible, the agency will decrease the percentage of child care costs paid for by the agency and increase the number of required activity hours for parents receiving low-income child care. These measures are necessary to help reduce the current level of spending and avoid the abrupt closure of the program. The agency is also amending §5109.B.1.c.ii to change "casehead" to "head of household" and §5109.D for technical reasons only.

A Declaration of Emergency effecting these changes was signed April 1, 2003, and published in the April issue of the *Louisiana Register*.

#### **Title 67**

#### **SOCIAL SERVICES**

#### **Part III. Office of Family Support Subpart 12. Child Care Assistance**

#### **Chapter 51. Child Care Assistance Subchapter B. Child Care Assistance Program §5103. Conditions of Eligibility**

- A. ...
- B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration, must meet the following eligibility criteria.
  1. - 3. ...
  4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration disability benefits, Supplemental Security Income, Veteran's Administration disability benefits for a disability of at least

70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

a. employed a minimum average of 25 hours per week effective April 1, 2003, and all countable work hours must be paid at least at the Federal minimum hourly wage; or

b. attending a job training or educational program that is legally authorized by the state for a minimum average of, effective April 1, 2003, 25 hours per week (attendance at a job training or educational program must be verified, including the expected date of completion); or

c. engaged in some combination of employment which is paid at least at the Federal minimum hourly wage, or job training, or education as defined in §5103.B.4.b that averages, effective April 1, 2003, at least 25 hours per week;

d. exception: a household in which all of the members described in §5103.B.4 meet the disability criteria is not eligible for child care assistance unless one of those

members meets, effective April 1, 2003, the required minimum average of 25 activity hours per week.

B.5. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:

**§5109. Payment**

A. The sliding fee scale used for non-FITAP recipients is subject to adjustment based on the state median income and poverty levels which are published annually. A non-FITAP household may pay a portion of its child care costs monthly in accordance with the sliding fee scale, and this shall be referred to as a "copayment." The sliding fee scale is based on a percentage of the state median income.

**Sliding Fee Scale for Child Care Assistance Recipients 75 Percent of Projected Median Income**

Number in Household	2	3	4	5	6	DSS %
Monthly Household Income	0 - 968	0 - 1219	0 - 1471	0 - 1723	0 - 1974	70%
	969 - 1535	1220 - 1908	1472 - 2281	1724 - 2654	1975 - 3027	50%
	1536 - 2101	1909 - 2596	2282 - 3090	2655 - 3585	3028 - 4079	30%
	above 2101	above 2596	above 3090	above 3585	above 4079	0%

Number in Household	7	8	9	10	11	DSS %
Monthly Household Income	0 - 2226	0 - 2478	0 - 2729	0 - 2981	0 - 3233	70%
	2227 - 3199	2479 - 3372	2730 - 3543	2982 - 3716	3234 - 3888	50%
	3200 - 4172	3373 - 4265	3544 - 4357	3717 - 4450	3889 - 4543	30%
	above 4172	above 4265	above 4357	above 4450	above 4543	0%

Number in Household	12	13	14	15	16	DSS %
Monthly Household Income	0 - 3484	0 - 3736	0 - 3988	0 - 4239	0 - 4491	70%
	3485 - 4060	3737 - 4232	3989 - 4405	4240 - 4577	4492 - 4749	50%
	4061 - 4636	4233 - 4728	4406 - 4821	4578 - 4914	4750 - 5006	30%
	above 4636	above 4728	above 4821	above 4914	above 5006	0%

Number in Household	17	18	19	20		DSS %
Monthly Household Income	0 - 4743	0 - 4994	0 - 5246	0 - 5498		70%
	4744 - 4921	4995 - 5093	5247 - 5266			50%
	4922 - 5099	5094 - 5192	5267 - 5285			30%
	above 5099	above 5192	above 5285			0%

NOTE: Effective April 1, 2003, the department's percentage of payments for low-income child care cases has been adjusted as reflected in the above tables.

B.1.a. - c.i. ...

ii. the number of hours the head of household, the head of household's spouse, or the minor unmarried parent is working and/or attending a job training or educational program each week, plus on hour per day for travel to and from such activity. For households with more than one TEMP, the hours of the TEMP with the smallest number of activity hours are used.

B.2. - C. ...

D. Payment may be made to more than one provider for the same child if the combined payment does not exceed the maximum allowable per child.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? This Rule will have no effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? These changes may jeopardize the safety and well being of the children as some low-income households may be unable to afford the increase in child care costs, and as a consequence, either leave the children unattended while they are at work or be forced to quit working because of lack of child care.

4. What effect will this have on family earnings and family budget? The Rule could impact the family budget, as households will be required to pay a larger percentage of child care costs.

5. What effect will this have on the behavior and personal responsibility of children? This bill will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

Interested persons may submit written comments by July 29, 2003, to Ann S. Williamson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065. She is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on July 29, 2003, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of

the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Gwendolyn P. Hamilton  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Child Care Assistance Program  
(CCAP)C Conditions of Eligibility;  
Activity Hours; Payment**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Annual savings total \$10.1 million for FY 02/03 and \$60.7 million for FY 03/04 and continuing. Reducing the state's percentage of payment will save \$54.4 million and increasing the parents' required activity hours will save approximately \$6.3 million.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This Rule will have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The cost of child care for low-income households will increase as a result of these amendments because the agency's share of child care costs is being reduced from 100, 95, and 85 percent to 70, 50, and 30 percent. The difference in the agency's share will be borne by low-income households in the form of higher co-payments that is estimated to be \$102 per child. Additionally, 3,000 children in low-income child care cases had their benefits terminated as a result of the agency increasing the number of activity hours required for child care assistance eligibility from 20-25 hours per week. These households are now required to pay 100 percent of their child care costs.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The Rule will have no impact on competition and employment.

Ann S. Williamson  
Assistant Secretary  
0306#067

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

# Potpourri

**POTPOURRI**  
**Office of the Governor**  
**Oil Spill Coordinator's Office**

Public Meetings Louisiana Regional Restoration Planning

Federal and State natural resource trustees (National Oceanic and Atmospheric Administration (NOAA); United States Department of the Interior; Louisiana Oil Spill Coordinator's Office; Louisiana Department of Environmental Quality; Louisiana Department of Natural Resources; and Louisiana Department of Wildlife and Fisheries) are requesting comments on the Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement, May 2003 (DPEIS).

Notice of the availability of this DPEIS was published in the Federal Register on May 9, 2003, and the comment period ends on July 9, 2003. The purpose of the Louisiana Regional Restoration Planning Program is to develop an institutional framework and procedures that will enable the trustees to restore natural resources injured by oil spills in an expedited and cost effective manner.

**PUBLIC MEETINGS:** Two public meetings to receive public comments on the Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement, May 2003, will be held on Monday, June 23, 2003. The daytime meeting is scheduled at 2 p.m. and the evening meeting is scheduled at 6:30 p.m. Both meetings will be held at the following location:

Conservation and Mineral Board Resources  
Hearing Room  
1st Floor, LaBelle Room  
Louisiana Department of Natural Resources  
LaSalle Office Building  
617 N. 3rd Street  
Baton Rouge, LA 70802

For further information contact William Conner at [301] 713-3038, ext. 190, or [William.Conner@noaa.gov](mailto:William.Conner@noaa.gov); or visit [www.darp.noaa.gov](http://www.darp.noaa.gov).

Roland Guidry  
Oil Spill Coordinator

0306#065

**POTPOURRI**  
**Office of the Governor**  
**Oil Spill Coordinator's Office**

Restoration Planning Plaquemines Parish  
North Pass Oil Spill

**Purpose**

The Louisiana Oil Spill Coordinator's Office (LOSCO), as the Trustee coordinator for the State of Louisiana, in consultation and agreement with the state natural resource

trustees, namely the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Natural Resources (LDNR), the Louisiana Department of Wildlife and Fisheries (LDWF); and the federal natural resource trustees, namely the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Department of the Interior (DOI), represented by the U.S. Fish and Wildlife Service (USFWS), have determined that the impacts of the September 22, 2002 discharge of crude oil by Ocean Energy, Incorporated, over which such Trustees have jurisdiction, warrants conducting a natural resource damage assessment that will include restoration planning.

**Site and Release Information**

On September 22, 2002, an above ground storage tank, owned and operated by Ocean Energy, Incorporated, discharged an undetermined amount of crude oil into the coastal waters of North Pass, Plaquemines Parish, Louisiana. An accurate determination of the released volume is difficult to determine. An original spill volume estimate of 297 barrels was reported based on engineering calculations of throughput and production data. However, on-scene responders visually estimated that the release could have been as much as 700 barrels. An undetermined amount of marsh, other habitats, and fauna inhabiting this area may have been exposed to crude oil as a result of this discharge. Ocean Energy has been designated as the statutory Responsible Party (RP) for this incident pursuant to the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. §2701 et seq.

North Pass and the adjacent areas are part of the modern Mississippi River delta complex, which is characterized by soft organic sediment. Tidal amplitude is small and often driven primarily by wind. North Pass is bordered by an extensive acreage of freshwater marsh, which is critical nursery habitat for numerous species and provides many other ecological services. The North Pass area also includes bayous, channels, and small islands. Aquatic organisms present include, but are not limited to, finfish, crustaceans, and shellfish. Wildlife species that may be present in the North Pass area include, but are not limited to, resident and migratory birds, furbearers, aquatic mammals, and turtles. Some of the species that may be present have threatened or endangered status.

**Authorities**

The Trustees are designated pursuant to 33 U.S.C. §2706(b), Executive Order 12777, and the National Contingency Plan, 40 C.F.R., §§300.600 and 300.605. Pursuant to R.S. 30:2460, the State of Louisiana Oil Spill Contingency Plan, September 1995, describes state trust resources, including the following: vegetated wetlands, surface waters, ground waters, air, soil, wildlife, aquatic life, and the appropriate habitats on which they depend. The DOI, through the involvement of the USFWS, is Trustee for natural resources described within the National Contingency Plan, 40 C.F.R. §300.600(b)(2) and (3), which include the following and their supporting ecosystems: migratory birds, anadromous fish, endangered species and marine mammals, federally owned minerals, certain federally managed water

resources, and natural resources located on, over, or under land administered by DOI. NOAA's trust resources include, but are not limited to, commercial and recreational fish species, anadromous and catadromous fish species, marshes and other coastal habitats, marine mammals, and endangered and threatened marine species.

#### **Trustees' Determinations**

Following the notice of the discharge, the natural resource trustees have made the following determinations required by 15 C.F.R. §990.41(a).

- The natural resource trustees have jurisdiction to pursue restoration pursuant to the Oil Pollution Act (OPA), 33 U.S.C. §2702 and 2706(c) and the Oil Spill Prevention and Response Act (OSPRA), R.S. 30:2451 et seq. The Trustees have further determined that the discharge of crude oil into the area of North Pass on September 22, 2002, was an incident, as defined in 15 C.F.R. §990.30 and LAC 43:XXIX.109.
- This incident was not permitted under state, federal or local law.
- The incident was not from a public vessel.
- The incident was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. §1651, et seq.
- Natural resources under the trusteeship of the natural resource Trustees listed above may have been injured as a result of the incident. The crude oil discharged contains components that may be toxic to aquatic organisms, infauna, birds, wildlife and vegetation. Vegetation, birds, and/or aquatic organisms have been exposed to the oil from this discharge, and mortalities to some flora and fauna, as well as lost ecological services, may have resulted from this incident.

Because the conditions of 15 C.F.R. §990.41(a) were met, as described above, the trustees made the further determination, pursuant to 15 C.F.R. §990.41(b) and LAC 43:XXIX.101, to proceed with preassessment. Ocean Energy, Incorporated, at the invitation of the Trustees, agreed to participate in the preassessment phase of this case, pursuant to 15 C.F.R. §990.14(c) and LAC 43:XXIX.115.

#### **Determination to Conduct Restoration Activities**

For the reasons discussed below, the natural resource trustees have made the determinations required by the 15 C.F.R. §990.42(a) and are providing notice pursuant to 15 C.F.R. §990.4 and LAC 43:XXIX.123 that they intend to conduct restoration planning in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of this incident.

Injuries have resulted from this incident, although the extent of such injuries has not been fully determined at this time. The Trustees base this determination upon data collected and analyzed pursuant to 15 C.F.R. §990.43 and LAC 43:XXIX.119, which demonstrate that resources and services have been injured by this incident. Natural resources and natural resource services injured or lost as a result of the discharge and the response may include, but are not limited to, aquatic organisms, infauna, birds, vegetation, benthic communities, water quality, fish and wildlife, and recreational use opportunity.

Although response actions were pursued, the nature of the discharge and the sensitivity of the environment precluded prevention of some injuries to natural resources. The trustees believe that injured natural resources could return to baseline through natural or enhanced recovery, but interim losses have occurred and will continue to occur until a return to baseline is achieved.

Feasible primary and compensatory restoration actions exist to address injuries from this incident. Restoration actions that could be considered include, but are not limited to replanting native wetland vegetation in appropriate areas, and creation, enhancement or protection of marsh.

Assessment procedures are available to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services. The Habitat Equivalency Analysis to determine compensation for injuries to marsh vegetation and marsh services may be utilized.

#### **Public Involvement**

Pursuant to 15 C.F.R. §990.44(c) and LAC 43:XXIX.135, the Trustees will seek public involvement in restoration planning for this discharge, through public review and comments on the documents contained in the administrative record, which will include the Draft and Final Restoration Plans when completed. The administrative record for this discharge will be maintained at the Louisiana Oil Spill Coordinator's Office. For more information, please contact the Louisiana Oil Spill Coordinator's Office, State Office Building, 150 North 3rd Street, Suite 405, Baton Rouge, LA, 70801-1313; phone (225) 219-5800 (Attn: Oil Spill/Gina Muhs Saizan).

The Louisiana Oil Spill Coordinator, as the Lead Administrative Trustee, and on behalf of the natural resource trustees of the State of Louisiana, DOI/USFWS, and NOAA, pursuant to the determinations made above and in accordance with 15 C.F.R. §990.44(d) and LAC 43:XXIX.135, hereby provides Ocean Energy, Inc., this Notice of Intent to Conduct Restoration Planning and invites its participation in conducting the restoration planning for this incident.

Roland J. Guidry  
Oil Spill Coordinator

0306#066

#### **POTPOURRI**

**Department of Health and Hospitals  
Office of Management and Finance  
Division of Research and Development  
Office of Primary Care and Rural Health**

Community-Based and Rural Health Program Grants

Effective July 15, 2003, the Department of Health and Hospitals, Division of Research and Development, Office of Primary Care and Rural Health, will begin accepting letters of intent from applicants who are interested in applying for funding to support the development of new federally qualified community health centers in health professional shortage areas (HPSA) or for other projects that are designed

to maintain, enhance, or expand access to primary health care services in rural and or/health professional shortage areas.

#### **Federally Qualified Community Health Center Grants**

The Community-Based and Rural Health Program is expected to be able to provide \$500,000 in funding to support the development of new federally qualified community health centers in Louisiana's HPSAs. Applicants may apply for up to \$150,000 in funding for expenses related to the development of new federally qualified community health centers. These expenses may include but are not limited to: business planning, feasibility studies, grant writing, capital improvements, and equipment. Grantees will be required to submit a grant application to the Health Resources and Services Administration's Bureau of Primary Health Care (BPHC) in the federal fiscal year (FFY) 2004 for operational support for new health center access points under the Consolidated Health Center Program authorized under section 330 of the Public Health Service Act as amended. Funds for capital improvements and equipment will be contingently awarded and will only be released to grantees upon receipt of a notice of grant award from the BPHC for a new health center access point prior to June 30, 2004. Eligible applicants include existing federally qualified community health centers and other public or non-profit (a tax-exempt entity as described in Section 501(c)(3) of the Internal Revenue Code) health care provider organizations located in a federally designated HPSA.

#### **Maintaining, Expanding, or Enhancing Access to Primary Health Care Services**

The Community-Based and Rural Health Program is also expected to be able to provide \$500,000 in funding:

- to establish, expand or enhance primary and preventive health care services to persons in rural and/or HPSAs;
- to encourage primary health care providers to practice in HPSAs and/or rural communities;
- for feasibility studies, capital improvements, equipment, and primary care provider recruitment;
- for matching funds for demonstration project(s) to establish new primary health services in local underserved communities or rural areas, provided such projects shall be required to secure other local or other grant funding; and
- matching funds for other grants to provide community-based health services to indigent or low-income persons.

Applicants may apply for up to \$50,000 in funding. Eligible applicants include public or non-profit (a tax-exempt entity as described in Section 501(c)(3) of the Internal Revenue Code) health care provider organizations located in a rural and/or federally designated health professional shortage area as identified in Act 162 from the 2002 Extraordinary Session of the Louisiana Legislature.

Community-Based and Rural Health Program grantees from the state fiscal year (SFY) 2003 that received the full grant award of \$50,000 are not eligible to apply in this round for this type of grant. Program grantees from SFY 2003 that received less than the maximum award of \$50,000 may

apply for the difference between \$50,000 and the amount of their 2003 grant award.

Applicants should indicate the type of grant award for which they are applying. Applicant organizations may only submit one application and cannot apply for both types of grants.

Applications for Community-Based and Rural Health Program grants will be competitive. The Department of Health and Hospitals will select from competing applications using the following evaluation criteria:

- justification/need for the project □ degree of medically underserved in the proposed project area;
- degree to which the project targets the medically underserved population identified in the needs assessment section of the proposal;
- description of process for delivering and networking quality primary health services, including services for patients without the ability to pay;
- verification and description of sound management practices and financial plans, including reasonable project budget where readiness and sustainability can be demonstrated;
- assurance(s) regarding project success-description of clinical performance and clinical outcome indicator;
- degree of community-based support (match) for the project;
- applicant's past contract/grant performance with the Department of Health and Hospitals; and
- applicant's previous experience in the delivery of primary care services.

Should the number of requests for funding exceed the available funds, the Department of Health and Hospitals reserves the right to prioritize requests based on the proposal's impact on the service area and/or the health professional shortage area's designation ratio.

The required format for the application will be referenced in the Community-Based and Rural Health Program grant guidelines. Application guidelines will be available July 1, 2003 and may be obtained by contacting Beth Millet at the contact information listed below. Application guidelines will also be available on line at [www.dhh.state.la.us/pcrh](http://www.dhh.state.la.us/pcrh) on the Grant Opportunities page.

A letter of intent is required and should be submitted (postmarked or delivered by the close of business) by July 31, 2003. Letters of intent may be faxed or mailed to the contact information listed below. Subsequent completed grant applications must be submitted (postmarked or delivered by the close of business) by mail or hand delivery to the Office of Primary Care and Rural Health by August 30, 2003. Award announcements will be made by October 15, 2003.

#### **Contact Information**

Office of Primary Care and Rural Health  
Attention: Beth Millet  
P.O. Box 2870  
Baton Rouge, LA 70821-2870  
225 / 342-1889 (office)  
225 / 342-5839 (fax)



The provision of this Potpourri is contingent upon the availability of funds.

David W. Hood  
Secretary

0306#046

**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 18 claims in the amount of \$43,643.36 were received for payment during the period May 1-31, 2003. There were 17 claims paid and 1 claim denied.

Loran Coordinates of reported underwater obstructions are:

27626	46916	St. Mary
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Latitude/Longitude Coordinates of reported underwater obstructions are:

2903.770	9035.160	Terrebonne
2904.703	9014.476	Lafourche
2905.180	9011.690	Lafourche
2908.210	9035.760	Terrebonne
2911.249	9051.343	Terrebonne
2914.794	9034.646	Terrebonne
2915.760	8937.240	Plaquemines

2918.345	8923.750	Plaquemines
2934.041	8940.487	Plaquemines
2936.351	8933.771	Plaquemines
2943.792	9323.362	Cameron
2944.502	9340.588	Cameron
2950.460	8917.690	St. Bernard
2951.317	8940.143	St. Bernard
2952.000	8937.600	St. Bernard
2953.938	8916.332	St. Bernard
2958.510	8922.550	St. Bernard

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

0306#039

**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
EADS Operating Co.	North Crowley	L	Edna H. Arceneaux Trust	1	197744
Eastern Oil Corp.	East Moss Lake	L	D. C. Powell	6	100023(30)
DNA Petroleum, Inc.	University	L	NS 3 Rd Sub; LSU	1	196612
James F. Morse & Co.	Napoleonville	L	Dr Henry Leblanc	2	039332
Acadian Oil and Gas, LLC	Sherburne	L	VUA; Meraux	1	225682
Acadian Oil and Gas, LLC	South Bosco	L	John W. Hutchison et al.	1	226822
Graham Royalty, Ltd.	Intracoastal City	L	W. J. Kuehling	1	155374(30)
Lincoln Rock Corporation	Wildcat-So LA	L	John N. Leblanc	1	129866
Nicklos Oil & Gas Co.	PINE PRAIRIE	L	Jesse Reed	4	033480
Roy M. Huffington, Inc.	Intracoastal City	L	13600 SUA; W. J. Kuehling	1	072605(30)
Lacal Petroleum Company	Boston Bayou	L	Vermilion Parish School Board	1	097347
PTL Operating Co.	Caddo Pine Island	L	Mercer	1	187925
PTL Operating Co.	Caddo Pine Island	L	Mercer	2	188790
PTL Operating Co.	Caddo Pine Island	L	Noel	1	202661
PTL Operating Co.	Caddo Pine Island	L	Noel	2	203208
HGH Energy, Inc.	Bayou Fordoche	L	C. Broussard A SWD	1	042110(30)
HGH Energy, Inc.	Bayou Fordoche	L	A. G. Broussard SWD	1	050248
HGH Energy, Inc.	Bayou Fordoche	L	A. G. Broussard	2	057671(30)
HGH Energy, Inc.	Bayou Fordoche	L	A. G. Broussard	2-D	098840(30)
HGH Energy, Inc.	Bayou Fordoche	L	C. Broussard	1	215353(30)
HGH Energy, Inc.	Bayou Fordoche	L	C. Broussard A	1-D	128874(30)
HGH Energy, Inc.	Bayou Fordoche	L	A. G. Broussard	5	132312(30)
HGH Energy, Inc.	Bayou Fordoche	L	A. G. Broussard	5-D	132694(30)
HGH Energy, Inc.	Bayou Fordoche	L	Alexis Voories	4	133039(30)
HGH Energy, Inc.	Bayou Fordoche	L	Alexis Voories	4-D	133511(30)

James H. Welsh  
Commissioner

0306#045

**POTPOURRI**

**Department of Transportation and Development  
Sabine River Compact Administration**

Meeting Notice  
Sabine River Compact Administration

The spring meeting of the Sabine River Compact Administration will be held at the Lafayette Hilton and Towers, Lafayette, Louisiana, June 20, 2003, at 8:30 a.m.

The purpose of the meeting will be to conduct business as programmed in Article IV of the By-Laws of the Sabine River Compact Administration.

The fall meeting will be held at a site in Texas to be designated at the above described meeting.

Contact person concerning this meeting is:

Kellie Ferguson, Secretary  
Sabine River Compact Administration  
15091 Texas Highway  
Many, LA 71449  
(318) 256-4112

Kellie Ferguson  
Secretary

0306#012

**CUMULATIVE INDEX**  
**(Volume 29, Number 6)**

Pages	2003	Issue
1 - 87 .....		January
88 - 259 .....		February
260 - 514 .....		March
515 - 656 .....		April
657 - 818 .....		May
819 - 1039 .....		June
EOC Executive Order		
PPMC Policy and Procedure Memoranda		
ERC Emergency Rule		
RC Rule		
NC Notice of Intent		
CRC Committee Report		
GRC Governor's Report		
LC Legislation		
PC Potpourri		

**ADMINISTRATIVE CODE UPDATE**

**Cumulative**

- January 2002–December 2002, 79
- January 2003–March 2003, 644

**AGRICULTURE AND FORESTRY**

**Agriculture & Environmental Sciences, Office of  
Boll Weevil Eradication Commission**

- Adjudicatory hearing
- Assessment 2003, establishment, 82P, 252P
- Participation, fee payment and penalties, 198N, 859R

**Agro-Consumer Services, Office of**

- Chloramphenicol in shrimp and crawfish testing, sale and labeling, 90ER
- Weights/Measures Division, Office of
- Taxi meter registration/annual fee, 3ER, 660ER

**Animal Health Services, Office of**

- Imposition of quarantine on out-of-state poultry and other avian species, 252P

**Commissioner, Office of the**

- Chloramphenicol in
- Crabs
- Testing and sale, 515ER
- Shrimp and crawfish
- Testing and sale, 831ER
- Contagious diseases, 52N
- Pesticides, application of, 518ER

**Forestry, Office of**

- Timber stumpage values, 82P

**Horticulture Commission**

- Annual quarantine listing, 645P
- Landscape architect registration exam, 252P
- Retail floristry examination, 252P, 810P

**Pesticides and Environmental Programs Division**

- Pesticide restrictions
- Pesticide icon use, 264ER

**Structural Pest Control Commission**

- Termite bait and baiting systems, 375N

**CIVIL SERVICE**

**Civil Service Commission**

- Gainsharing and exceptional performance, 964N
- Market grade adjustment, 964N
- Rate of pay upon
- Demotion, 964N
- Job correction or grade assignment, 964N
- Promotion, 964N
- Reallocation, 964N

**CULTURE, RECREATION AND TOURISM**

**Atchafalaya Trace Commission**

- Atchafalaya Trace Heritage Area Development Zone, 717N

**ECONOMIC DEVELOPMENT**

**Business Development, Office of  
Business Resources Division**

- Award Program, 860R
  - Linked Deposit Program, 378N
  - Small business linked deposit loan program, 859R
  - Workforce Development and Training Program, 265ER, 379N
  - University Foundation Investment Program, 834ER
- Secretary, Office of the**
- Business Retention and Assistance Services
  - Small and Emerging Business Development Program, 542R
  - Capital Companies Tax Credit Program, 519ER, 966N

**EDUCATION**

**Elementary and Secondary Education, Board of**

- Bulletin 104C Louisiana K-12 Educational Technology Standards, 967N
- Bulletin 741C Louisiana Handbook for School Administrators
- Adult education programs section, 33R
- Assessment program erasure analysis procedures, 383N

BESE test security policy, 383N  
 Instructional program standards, 117R  
 Personal financial literacy, 287R  
 Policy for Louisiana's Public Education  
 Accountability System, 287R, 299R,  
 552R, 719N, 971N  
 Principal/Assistant Principal Induction Program,  
 199N, 865R  
 Time requirements, 552R  
 Transfer of nonpublic/home school students  
 to public schools, 286R  
 Transfer policy changes, 53N  
 Unsafe school choice option policy, 730N  
 Bulletin 746C Louisiana Standards for State  
 Certification of School Personnel  
 Denial of certificate for criminal offenses, 117R  
 Grade 7-12 certification/primary secondary  
 teaching focus areas, 390N  
 New certification structure for  
 educational leadership, 119R  
 Non-Masters Certification-Only Alternate  
 Program, 392N  
 Out of field authorization to teach license,  
 fee policy, 387N  
 Private provider for alternate certification  
 policy, 393N  
 Suspension, revocation, and reinstatement  
 of certificates for criminal offenses, 121R  
 Teacher education program private providers  
 policy, 394N, 396N  
 Validity, reinstatement, renewal, and  
 extension of certificates, 977N  
 Bulletin 1196C Louisiana Food and Nutrition  
 Programs Policies of Operation, 979N  
 Bulletin 1566C Guidelines for Pupil Progression,  
 123R, 622N  
 Bulletin 1573C Complaint Management Procedures,  
 397N  
 Bulletin 1706C Regulations for Implementation  
 of the Children with Exceptionalities Act  
 Students with disabilities regulations, 200N,  
 867R  
 Bulletin 1794C State Textbook Adoption Policy  
 and Procedure Manual, 124R  
 Bulletin 1943C Louisiana teacher assistance and  
 assessment policies and procedures, 553R  
 Bulletin 1965C English language arts content  
 standards, 306R  
**Student Financial Assistance, Office of**  
**Student Financial Assistance Commission**  
 Scholarship/Grants Program, 54N, 125R,  
 269ER, 401N, 554R, 660ER, 732N,  
 879R, 996N  
 Definitions, 555R  
 Military service, 520ER  
**Tuition Trust Authority**  
 START Program, 55N, 405N  
 Definitions, 556R  
 Interest rates, 272ER

## ENVIRONMENTAL QUALITY

### Environmental Assessment, Office of Environmental Planning Division

Commercial laboratories pending  
 accreditation, 273ER, 311R  
 Concentrated animal feeding operations, 998N  
 Contamination, public notification,  
 274ER, 624N  
*DeMinimis* concentration of regulated  
 substances, 622N  
 Fee increases for FY 02-03, 93ER  
 Fee increases for FY 03-04, 56N, 670R  
 Fees/risk/cost/benefit statement  
 Amendments, 810P  
 Hazardous waste site cleanup  
 fund prioritization, 57N, 696R  
 Incorporation by reference (IBR)  
 2002, 405N, 697R  
 of 40 CFR  
 60, 58N, 316R, 409N  
 Part 63, 1003N  
 Part 93, 697R  
 Minerals criteria revision for Vermilion River,  
 Bayou Teche, Bayou Courtableau, and West  
 Atchafalaya Borrow Pit Canal, 1004N  
 Motiva Enterprises delisting petition, 410N  
 NCR amendments to radiation protection  
 regulations, 1006N  
 Naturally dystrophic waters performance, 556R  
 Oil and gas construction activities permit  
 deadline postponement, 274ER, 413N, 701R  
 Public records requests procedures, 214N, 701R  
 Radiation protection, 1012N  
 Radiographer trainee requirements, 33R  
 RCRA XII package, 59N, 317R  
 Risk Evaluation/Corrective Action Program  
 (RECAP) Revision 2, 253P  
 Site specific criteria adjustment for Bayou  
 Chinchuba and Tchefuncte River Wetlands,  
 1014N  
 Solid waste regulations reorganization, 312R  
 State Implementation Plan (SIP)  
 General revision public hearing 2002, 509P  
 Vapor recovery systems, Stage II, 557R  
 Waste tires, 662ER  
 Fee reporting, 1016N  
**Secretary, Office of the**  
 Fee increase FY 02-03, 93ER  
 Waste tires, 3ER

## EXECUTIVE ORDERS

MJF 02-73C Louisiana Domestic Terrorism  
 Advisory Committee, 1EO  
 MJF 02-74C Carry-Forward Bond Allocation-  
 Louisiana Housing Finance Agency, 2EO  
 MJF 03-01C Bond Allocation-Industrial  
 Development Board of the City of  
 Donaldsonville, Louisiana, Inc., 88EO

MJF 03-02C Governor's DWI/Vehicular Homicide Task Force, 88EO  
 MJF 03-03C Additional 2002 Carry-Forward Bond AllocationC Louisiana Housing Finance Agency, 260EO  
 MJF 03-04C Executive BranchC Expenditure Freeze, 260EO  
 MJF 03-05C Executive BranchC Appropriations Cuts, 262EO  
 MJF 03-06C Regional TraumaC Patient Care Statewide System Task, 657EO  
 MJF 03-07C Bond AllocationC Louisiana Housing Finance Agency, 658EO  
 MJF 03-08C Louisiana Drug Control and Violent Crime Policy Board, 659EO  
 MJF 03-09C Bond AllocationC Industrial District No. 3 of the Parish of West Baton Rouge, State of Louisiana, 819EO  
 MJF 03-10C Prohibited Expenditure of State Monies, 819EO  
 MJF 03-11C Bond AllocationC Louisiana Public Facilities Authority, 820EO

**GOVERNOR, OFFICE OF THE**

**Administration, Division of**

**Community Development, Office of**

Consolidated annual action plan  
 Performance and evaluation report, 649P  
 Proposed FY 2004, 647P  
 Public hearing FY 2004, 254P

**Cosmetology, Board of**

Revision of LAC 46:XXXI, 325R

**Financial Institutions, Office of**

CAPCO definitions, 343R

**Group Benefits, Office of**

EPO Plan of Benefits  
 Accumulation of deductibles, 334R  
 Co-Insurance, 334R  
 Employer responsibility, 275ER, 837ER, 1017N  
 Out of pocket expenses, 334R  
 Pre-existing conditions  
 Effective dates/limitations, 336R  
 Prescription drugs, 337R  
 Retiree coverage, 338R  
 Well-adult care expenses, 338R  
 MCOC Managed Care Option  
 Plan of Benefits, 414N, 883R  
 PPO Plan of Benefits  
 Accumulation of deductibles, 339R  
 Co-Insurance, 339R  
 Comprehensive medical benefits, 577R  
 Employer responsibility, 276ER, 837ER, 1018N  
 Out of pocket expenses, 334R  
 Pre-existing conditions  
 Effective dates/limitations, 340R

Prescription drugs, 341R  
 Retiree coverage, 342R  
 Well-adult care expenses, 343R

**Racing Commission**

Net slot machine proceeds, 36R  
 Worker's compensation insurance, 5ER, 217N

**State Purchasing, Office of**

Computer equipment and services  
 Procurement of, 276ER, 434N  
 LaMAS (Louisiana Multiple Award Schedule)  
 State contracts based on GSA prices, 109ER, 216N

**State Travel, Office of**

General travel PPM 49, 822PPM

**Architectural Examiners, Board of**

Architects, 558R

**Certified Public Accountants, Board of**

Computer-based uniform CPA exam, 733N

**Crime Victims Reparations Board**

Compensation to victims, 577R

**Oil Spill Coordinator, Office of**

Public meetings/Louisiana regional restoration planning, 1029P  
 Restoration planning/Plaquemines Parish North Pass Oil spill, 1029P

**Patient's Compensation Fund Oversight Board**

Eligible healthcare providers, practice groups and qualification/enrollment in the fund, 344R, 579R

**Real Estate Commission**

Agency disclosure, 349R, 579R  
 Appraiser certification, 126R  
 Real estate names and/or trade names, 127R  
 Transactions, 218N

**Shorthand Reporters, Board of Examiners of**

Examinations, 626N

**Used Motor Vehicle and Parts Commission**

Hearings on disputes under the area of responsibility, 736N  
 Repossession of vehicles, 218N, 703R

**HEALTH AND HOSPITALS**

**Dentistry, Board of**

Laser requirements, 627N  
 Licensure by credentials, 627N

**Embalmers/Funeral Directors, Board of**

Examinations, 811P

**Licensed Professional Counselors, Board of Examiners**

Licensure of licensed professional counselors and licensed marriage and family therapists, 128R  
 Continuing education requirements, 581R

**Management and Finance, Office of**

Community-Based and Rural Health Program Grants, 1030

**Medical Examiners, Board of**

Continuing medical education, 68N  
Podiatric postgraduate year one registration  
reinstatement, 68N

**Nursing, Board of**

Administration of medications to children  
in detention facilities, 1019N  
Definitions, 1020N  
Licensure as advanced practice registered nurse,  
68N, 580R  
Public comment at board meetings, 581R

**Practical Nursing Examiners, Board of**

Appointing authority, 127R

**Psychologists Board of Examiners**

Ethical standards of psychologists, 219N, 628N, 703R

**Public Health, Office of**

Genetic disease neonatal screening, 784N  
Louisiana BEACH Grant Report, 811P  
Maternal and Child Health Section  
Block grant application, 812P  
Preparation and handling of seafood for market, 173R

**Radiologic Technology Board of Examiners**

Informal proceeding/consent order and licensure,  
182R

**Secretary, Office of the**

Capital Area Human Services District, 631N

**Community Supports and Services, Bureau of**

Home/Community Based Service Waiver Program  
Children's choice, 38R  
Crisis designation, 220N, 704R  
New opportunities waiver, 838ER  
Standards of participation, 738N  
Mentally retarded/developmentally disabled waiver  
skilled nursing services, 113ER, 846ER  
Targeted case management services, 38R  
Nurse Family Partnership Program, 743N

**Health Services Financing, Bureau of**

Abortion Facility Licensure, 221N, 705R, 902R  
Durable Medical Equipment Program  
Motorized wheelchairs, 664ER  
Nebulizers reimbursement reduction, 521ER  
Vagus nerve stimulators, 227N, 280ER  
Early and Periodic Screening, Diagnosis/Treatment  
Dental Program reimbursement, 110ER, 852ER  
LAC codification, 175R  
Psychological and behavioral services, 39R  
Rehabilitation reimbursement, 112ER  
Eligibility, Medicaid  
Annuities, 6ER, 444N, 523ER  
Application date, 1021N  
Burial fund exclusion, increase of, 780N  
Incurred deductions, 5ER  
Incurred medical expenses, 73N, 710R  
Insurance cash surrender value,  
disregard of, 779N  
Low income pregnant women  
Expansion of coverage, 440N, 521ER, 910R  
Income disregards, 442N, 522ER, 910R  
Medically Needy Program  
Incurred deductions, 5ER, 523ER

Medicare Part B buy-in, QIs, 13ER,  
281ER, 853ER

Pregnant unmarried minors/disregard  
of parent income, 443N

Temporary assistance to needy families  
elimination of work related sanctions, 1022N

Unborn child inclusion, 441N, 910R

Freedom of choice waivers, 908R

Home health rehabilitation reimbursement  
112ER, 534ER

**Hospitals**

Disproportionate share hospital  
payment methodologies, 39R, 847ER

Final payment, 39R, 435N

Small rural hospitals, 39R, 435N

**Inpatient hospitals****Private hospitals**

Outlier payments, 10ER, 111ER, 447N  
528ER, 914R

Reimbursement reduction, 529ER, 854ER

**Psychiatric services**

Reimbursement reduction, 283ER, 529ER,  
857ER

Public hospital reimbursement target  
rate per discharge, 12ER, 533ER

Licensing standards, 744N

**Out of State hospitals****Services reimbursement**

Inpatient, 524ER

Outpatient, 525ER

**Outpatient hospitals**

Clinic services, 8ER, 637N, 665ER

Laboratory services, 526ER, 635N

**Private hospitals**

Reimbursement reduction, 855ER

Rehabilitation services, 112ER, 526ER,  
534ER, 636N

**Laboratory and X-ray**

Prenatal lab panels, 778N

**Mental Health Rehabilitation Services**

HIPAA implementation, 781N

**Mentally Retarded/Developmentally Disabled**

Private intermediate care facilities, 530ER,  
858ER

Skilled nursing services, 445N, 846ER

State operated intermediate care facilities,  
upper payment limit, 113ER, 666ER

**Nursing Facilities Services**

Public reimbursement, 12ER, 533ER

Reimbursement, 7ER, 110ER, 283ER, 531ER

Sanctions, appeals, 40R

Standards for payment/ventilator dependent  
care requirements for payments, 446N,  
911R

**Personal Assistant Services**

Employment support, 638N

**Personal Care Services**

Long Term Care, 229N, 911R

Pharmacy Program  
Catheters/catheter trays, 41R  
Prescription limit, 8ER, 111ER, 282ER, 853ER  
Professional Services Program  
Anesthesia services  
HIPAA implementation, 782N  
Physician services  
Antibiotic injections reimbursement,  
11ER, 531ER  
Cardiology, maternal fetal medicine  
reimbursement, 9ER, 527ER  
HIPAA implementation, 783N  
Orthopedic reimbursement, 11ER, 532ER  
Reimbursement increase, 532ER  
Rehabilitation Services  
Reimbursement fee increase, 112ER, 534ER,  
856ER  
Surveillance and utilization review systems, 583R  
**Veterinary Medicine, Board of**  
Board nominations, 82P  
Continuing veterinary education, 737N  
**Wholesale Drug Distributors, Board of**  
License procedure, 629N

**INSURANCE, DEPARTMENT OF  
Commissioner, Office of the**

Forms/Documents transmission/Rule 12, 41R  
Records management/Rule 14, 41R

**LABOR, DEPARTMENT OF  
Plumbing Board**

Definition of plumbing, 786N

**LEGISLATION**

**House Committee on Administration of  
Criminal Justice**

Video Draw Poker Code of Conduct  
of Licensees, 251CR

**NATURAL RESOURCES**

**Conservation, Office of**

Disposal of exploration and production  
waste, 914R  
Fees, 350R  
Orphaned oilfield sites, 82P, 254P, 509P,  
649P, 812P, 1032P  
Pipeline safety definitions, 448N  
for master meter systems, special class  
systems, and school systems, 255P  
Surface mining, 449N, 939R  
Underwater obstructions, 460N

**Secretary, Office of the**

Fisherman's gear compensation fund, 84P,  
651P, 813P  
Loran coordinates, 1032P  
Oyster Lease Acquisition Program  
CWPPRA, 535ER

**PORT COMMISSIONS**

**Bar Pilots Port of New Orleans, Board  
Examiners for the**

Bar pilot regulations, 350R

**New Orleans/Baton Rouge Steamship Pilots, Board  
Examiners for the**

Conduct/Investigation standards, 17ER, 235N  
Drug and alcohol policy, enhanced, 14ER, 232N

**PUBLIC SAFETY AND CORRECTIONS**

**Correction Services, Office of**

Telephone use/monitoring calls policy  
Adult and juvenile, 360R

**Fire Marshal, Office of the State**

NFPA Codes, 183R

**Gaming Control Board**

Age restrictions, 1023N  
Application/License, 362R  
Casino Operator/Manager, 1023N  
Definitions/General provisions, 362R  
Division authority, 362R  
Division room requirements, 362R  
Electronic gaming devices, new, 1023N  
Enforcement actions of the board, 362R, 1023N  
Imposition of sanctions, 362R  
Licensees/Permittees, 1023N  
Minors in gaming area, 1023N  
Surveillance, 362R, 1023N

**Motor Vehicles, Office of**

Driver's license, 604R  
License plates, 605R

**Secretary, Office of the**

Administration of medications to children  
in detention facilities, 1019N

**State Police, Office of**

Motor carrier safety and hazardous  
materials, 242N, 711R

**REVENUE AND TAXATION**

**Alcohol and Tobacco Control, Office of**

Responsible Vendor Program  
Servers, 462N  
Training, 463N  
Vendors, 464N  
Tobacco permits, 465N  
Unfair business practices, 461N

**Policy Services Division**

Alternative dispute resolution, 363R  
Corporation franchise tax surplus and undivided profits, 787N  
Exemption from tax, various, 806N  
Individual income tax tables, 788N  
Natural resources severance tax  
    Definition of payout, 243N, 951R  
    Sales and tax use, various exemptions, 537ER  
Sales tax on property used in interstate commerce, 188R  
Tangible personal property, definition of, 186R  
Tax refund offset, 42R

**Secretary, Office of the**

Penalty waiver, 114ER, 466N, 950R

**Tax Commission**

Ad valorem tax, 367R  
Timber stumpage values, 84P

**SOCIAL SERVICES****Community Services, Office of**

Anticipated funds availability notice, 85P  
Emergency Shelter Grants Program 2003, 85P  
Louisiana's child and family services plan and annual progress and services report, 256P  
Refugee resettlement program, 24ER, 244N, 666ER, 712R  
Social Services blocked grant intended use report, 511P

**Family Support, Office of**

Child Care Assistance Program  
    Activity hours, 1026N  
    Eligibility, 1026N  
    Grant program repair and improvement, 42R  
    Incentive bonuses, 26ER, 189R  
    Increased activity hours and adjustment of agency payments, 538ER  
    Payment, 1026N  
Food Stamp Program  
    Alien eligibility, restoration, 540ER  
    Farm bill 2002, 27ER, 75N, 605R  
Refugee Case Assistance Program  
    Repeal, 28ER, 247N, 540ER, 714R  
Social Security number proof, 641N  
Support enforcement recover action, 642N  
Temporary Assistance to Needy Families (TANF)  
    Adult education basic skills training, 44R  
    Caseload reduction report, 813P  
    Early Childhood Supports/Services Program, 44R  
    Individual development account, 44R  
    Initiatives, 29ER, 190R, 248N, 715R  
    Job skills training/retention, 44R

Women's and Children's Residential and Prevention Treatment Program, 115ER, 373R

**Rehabilitation Services, Office of**

Vocational rehabilitation services  
    General provisions, 46R  
**Secretary, Office of the**  
    Child day care/class A, 467N

**STATE, DEPARTMENT OF****Secretary of State, Office of the Archives, Division of**

Records management policies and practices, 482N, 951R  
Non-statutory fee schedule, 372R

**TRANSPORTATION AND DEVELOPMENT****Purchasing, Office of**

Purchasing, 607R

**Sabine River Compact Administration**

Meeting notice, 1033P

**Secretary, Office of the**

Cash management plan, 192R  
Tree treatment within right-of-way, 48R

**TREASURY****Louisiana State Employees' Retirement System**

Deferred Retirement Option Plan (DROP)  
    Legislative required changes/additions, 77N  
    Restructure of Title 71, 192R

**WILDLIFE AND FISHERIES****Fisheries, Office of**

Experimental Fisheries Program  
    Permits, 48R

**Wildlife and Fisheries Commission**

Black bass daily take/size limits, 373R  
Boating safety, 808N  
King mackerel 2003 season-commercial, 30ER  
Oyster lease moratorium, 284ER, 373R  
Red snapper season  
    Commercial 2003, 31ER  
    Recreational 2003, 32ER  
Resident game hunting seasons 2003/04, 494N  
Shrimp season  
    2003, 541ER  
    Closure of state outside waters, 115ER  
    Spring inshore 2003, 668ER  
Turkey season-Fort Polk, 285ER  
Wild nuisance quadrupeds,  
    Control of, 51R  
    Game breeder's license, 196R  
Wildlife management area hunting, 496N