

I. EXECUTIVE ORDERS

KBB 04-41 Governor's Military Advisory Board ..... 2421
KBB 04-42 Bond Allocation Caddo-Bossier Parishes Port Commission ..... 2422
KBB 04-43 Louisiana's Plan for Choice in Long-Term Care ..... 2422

II. EMERGENCY RULES

Economic Development

Office of the Secretary Governor's Economic Development Rapid Response Program (LAC 13:V.Chapter 2) . 2425

Environmental Quality

Office of Environmental Assessment Expedited Penalty Agreement (LAC 33:I.801, 803, 805, and 807) (OS054E2) ..... 2428

Health and Hospitals

Office of the Secretary, Bureau of Health Services Financing Durable Medical Equipment Program
Prosthetics and Orthotics Artificial Eyes, Scleral Shell, and Related Services
(LAC 50:XVII.1301-1305) ..... 2433
Home and Community Based Services Waivers New Opportunities Waiver (LAC 50:XXI.13707-13709) .... 2434
Hospital Program Transplant Services ..... 2437
Mental Health Rehabilitation Program Provider Enrollment Moratorium (LAC 50:XV.707) ..... 2438
Personal Care Services Long Term (LAC 50:XV.12901-12913) ..... 2438

Wildlife and Fisheries

Wildlife and Fisheries Commission Commercial King Mackerel Closure ..... 2441
Hunting Season Closure ..... 2442
Hunting Season Re-Opening ..... 2442
Inland and Saline Lakes Reopen to Fishing ..... 2442

III. RULES

Agriculture and Forestry

Boll Weevil Eradication Commission Boll Weevil Eradication (LAC 7:XV.314, 321, and 327) ..... 2443

Civil Service

Election of Employee Member of State Civil Service Commission (LAC 40:XXVII.101) ..... 2444

Education

Board of Elementary and Secondary Education Bulletin 111 Louisiana School District, and State
Accountability (LAC 28:LXXXIII.701, 703, 1503, 1705, 3303, 3503, 4101, 4310, and 4317) ..... 2445
Bulletin 741 Louisiana Handbook for School Administrators Pre-GED/Skills Option Program
(LAC 28:I.901) ..... 2446
Bulletin 746 Louisiana Standards for State Certification of School Personnel Louisiana
Requirements PRAXIS/NTE Scores (LAC 28:I.903) ..... 2447
Bulletin 746 Louisiana Standards for State Certification of School Personnel Revision to the
Highly Qualified HOUSSE Definition to Allow Credit for Experience Earned by "Not New"
Teachers (LAC 28:I.903) ..... 2450
Bulletin 746 Louisiana Standards for State Certification of School Personnel Suspension and
Revocation of Certificates Due to Fraudulent Documentation Pertaining to Certification
(LAC 28:I.903) ..... 2451
Bulletin 996 Louisiana Standards for Approval of Teacher Education Programs
(LAC 28:XLV.Chapters 1-13) ..... 2451
Bulletin 1179 Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools
(LAC 28:XXXI.511) ..... 2459
Bulletin 1196 Louisiana Food and Nutrition Programs, Policies of Operation
(LAC 28:XLIX.1105, 1503, 1509, 1511, and 1517) ..... 2459
Bulletin 1196 Louisiana Food and Nutrition Programs, Policies of Operation (LAC 28:XLIX.3301) ..... 2461

This public document was published at a total cost of \$1,775.00. Five hundred copies of this public document were published in this monthly printing at a cost of \$1,775.00. The total cost of all printings of this document including reprints is \$1,775.00. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:30. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

The Office of the State Register provides auxiliary aids for the Louisiana Register for visually impaired individuals. By appointment, oral presentation of the Register is available at the Office of the State Register, or an audiocassette tape of requested sections of the Register can be provided for the cost incurred by the Office of the State Register in producing such a tape. For more information contact the Office of the State Register.

**Environmental Quality**

Office of Environmental Assessment **C**Accident Prevention Regulations Incorporation by Reference (LAC 33:III.5901)(AQ245\*) ..... 2463  
Hazardous Waste Delisting (LAC 33:V.105 and 4999)(HW086) ..... 2463  
Surface Water Quality Standards **C**Reclassification of New Iberia Southern Drainage Canal and Its Ancillary Waters (LAC 33:IX.1123)(WQ056) ..... 2468

**Governor**

Board of Architectural Examiners **C**Informal Procedures for Violations (LAC 46:I.1903) ..... 2469  
Board of Examiners for New Orleans and Baton Rouge Steamship Pilots **C**General Provisions; Qualifications and Examination; Standards of Conduct; Investigations and Enforcement (LAC 46:LXX.Chapters 61, 64, 66, and 67) ..... 2471  
Office of Financial Institutions **C**Limitations on Investments in Premises and Fixed Assets (LAC 10:I.1101) ..... 2479  
Recreational and Used Motor Vehicle Commission **C**Licensure; Rent with Option-to-Purchase Program; Repossession; Marine Products; Marine Surveyor (LAC 46:V.2905, 3001, 3003, 3005, 3101, 3303, 3503, 4801, 4803, and 4901) ..... 2480

**Health and Hospitals**

Board of Nursing **C**Hepatitis B Virus (HBV) Hepatitis C Virus (HCV) and Human Immunodeficiency Virus (HIV) (LAC 46:XLVII.Chapter 40) ..... 2482  
Board of Pharmacy **C**Pharmacy Technicians (LAC 46:LIII.Chapters 8 and 9) ..... 2485  
Office of the Secretary, Bureau of Health Services Financing **C**Federally Qualified Health Centers (LAC 50:XI.Chapters 103-105) ..... 2487  
Medicaid Eligibility **C**Disregard of In-Kind Support and Maintenance ..... 2489  
Private and Public Non-State Owned and Operated Hospitals **C**Inpatient Psychiatric Services Reimbursement Increase ..... 2489  
Private Intermediate Care Facilities for the Mentally Retarded Reimbursement Increase ..... 2489

**Public Safety and Corrections**

Gaming Control Board **C**Rules of Play (LAC 42:IX.Chapter 31 and XIII.Chapter 31) ..... 2490  
Self-Exclusion (LAC 42:III.304) ..... 2493  
Office of State Police, Safety Enforcement Section **C**Motor Vehicle Inspection **C**On-Board Diagnostic Testing (LAC 55:III.819) ..... 2493

**Natural Resources**

Office of Conservation **C**Fees (LAC 43:XIX.703 and 707) ..... 2494

**Revenue**

Policy Services Division **C**Net Operating Loss Deduction (LAC 61:I.1124) ..... 2494

**Wildlife and Fisheries**

Wildlife and Fisheries Commission **C**Alligator Snapping Turtles **C**Recreational and Commercial Harvest; Prohibitions (LAC 76:XV.101) ..... 2495  
Black Bass **C**Daily Take and Size Limits (LAC 76:VII.149) ..... 2495  
Deer Programs (DMAP) and (LADT) (LAC 76:V.111 and 119) ..... 2495  
Spotted Seatrout Management Measures (LAC 76:VII.341) ..... 2498

**IV. NOTICES OF INTENT**

**Economic Development**

Office of the Secretary **C**Governor's Economic Development Rapid Response Program (LAC 13:Part V.Chapter 2) ..... 2499

**Education**

Board of Elementary and Secondary Education **C**School Approval Standards and Regulations, Early Childhood Programs, Pupil Progression and Remedial Education, Competency Based Education, and State Content Standards (LAC 28:I.901, 906, 907, 925, and 930) ..... 2500  
Bulletin 111 **C**Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.4310-4313) ..... 2501  
Bulletin 741 **C**Louisiana Handbook for Nonpublic School Administrators **C**Graduation Exit Examination (LAC 28:LXXIX.2511) ..... 2504  
Bulletin 746 **C**Louisiana Standards for State Certification of School Personnel **C**Requirements for Certification as Superintendent, Ancillary Superintendent, and Education Leader 3 (LAC 28:I.903) ..... 2504  
Bulletin 1943 **C**Policies and Procedures for Louisiana Teacher Assistance and Assessment (LAC 28:XXXVII.2503) ..... 2506

**Governor**

Division of Administration, Racing Commission **C**Ex Parte Communications (LAC 35:I.302) ..... 2507  
Racing Commissioners (LAC 46:XLI.Chapter 23) ..... 2508

**Health and Hospitals**

Office of the Secretary, Bureau of Health Services Financing **C**Children's Respite Care Centers Licensing (LAC 48:I.Chapter 80) ..... 2509  
Substance Abuse/Addiction Treatment Facilities **C**Licensing (LAC 48:I.Chapter 74) ..... 2529

<b>Insurance</b>	
Office of the Commissioner	<b>C</b>
Long-Term Care Insurance (LAC 37:XIII.Chapter 19) .....	2533
<b>Natural Resources</b>	
Office of the Secretary	<b>C</b>
Louisiana Home Energy Rater Training and Certification (LAC 43:I.1921 and 1923) ....	2556
<b>Revenue</b>	
Policy Services Division	<b>C</b>
Electronic Funds Transfer (LAC 61:I.4910) .....	2559
<b>Social Services</b>	
Office of Community Services	<b>C</b>
Developmental and Socialization Activities Program for Foster Children (LAC 67:V.3507).....	2560
Office of Family Support	<b>C</b>
TANF Initiatives	<b>C</b>
Adoption, Amendments and Repeals (LAC 67:III. Chapters 55 and 56).....	2561
Developmental and Socialization Activities Program for Foster Children (LAC 67:III.5579).....	2566
<b>Transportation and Development</b>	
Office of Highways/Engineering	<b>C</b>
Control of Outdoor Advertising (LAC 70:III.Chapter 1) .....	2567
Outdoor Advertising (LAC 70:III.103-109) .....	2569
<b>Wildlife and Fisheries</b>	
Wildlife and Fisheries Commission	<b>C</b>
Exotic Fish (LAC 76:VII.199) .....	2571
<b>V. POTPOURRI</b>	
<b>Agriculture and Forestry</b>	
Horticulture Commission	<b>C</b>
Retail Floristry Examination.....	2572
<b>Civil Service</b>	
Ethics Administration Program	<b>C</b>
Consideration of Sworn Complaints and Waivers of Late Filing Fees (LAC 52:I.701, 801, and 1205).....	2572
Procedure Concerning the Return of Funds Accepted during a Legislative Session (LAC 52:I.1608, 1919, and 1921).....	2572
<b>Environmental Quality</b>	
Office of Environmental Assessment	<b>C</b>
Advance Notice of Proposed Rulemaking; Solicitation of Comments on New Source Review; Rules for Prevention of Significant Deterioration Program (AQ246F and AQ246L)(LAC 33:III.509) .....	2573
<b>Natural Resources</b>	
Office of Conservation	<b>C</b>
Orphaned Oilfield Sites.....	2598
Office of Conservation, Injection and Mining Division	<b>C</b>
Legal Notice	<b>C</b>
Docket No. IMD 99-03.....	2598
Legal Notice	<b>C</b>
Docket No. IMD 2005-01 .....	2598
Office of the Secretary, Fishermen's Gear Compensation Fund	<b>C</b>
Loran Coordinates.....	2599
<b>VI. INDEX</b> .....	2600

# Executive Orders

## EXECUTIVE ORDER KBB 04-41

Governor's Military Advisory Board

WHEREAS, the state of Louisiana has a vital interest in the installations and/or units of the U.S. Coast Guard and/or the armed forces of the United States located within the state, in the Louisiana Military Department, and in the concerns of the Active, Guard, Reserve, and/or retired military personnel, and their families, who reside in Louisiana (hereafter "military");

WHEREAS, in the past, the state of Louisiana has successfully employed a coordinating body to provide a forum for these various military components and to serve as a liaison between the various military entities and representatives of civilian interests; and

WHEREAS, various situations will continue to arise which necessitates the continued use of such a coordinating body;

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

SECTION 1: The Governor's Military Advisory Board (hereafter "Board") is reestablished within the executive department, Office of the Governor.

SECTION 2: The duties and objectives of the Board shall include, but are not limited to, the following:

A. Providing a public forum for issues concerning the installations and/or units of the U.S. Coast Guard and/or the armed forces of the United States located within the state, Active, Guard, Reserve, and/or retired military personnel and their families who reside in Louisiana (hereafter "the military");

B. Formulating goals and objectives to enhance cooperation, coordination, communication, and understanding between the military, the Louisiana Congressional Delegation, the communities in the state interfacing with the military, and/or state and local government agencies;

C. Strengthening and/or increasing the state of Louisiana's role in securing defense related business contracts for Louisiana businesses and/or selling Louisiana products to the installations and/or units of the U.S. Coast Guard and/or the armed forces of the United States located within the state;

D. Studying and determining the means to increase and/or strengthen the presence of the U.S. Coast Guard and/or armed forces of the United States located within the state;

E. Reviewing and/or disseminating information about proposed legislation related to and/or directly impacting the U.S. Coast Guard and/or military communities within the state; and

F. Proposing and/or sponsoring activities, legislation, initiatives, programs, or projects which increase, support, or enhance the U. S. Coast Guard and/or military's

presence within the state or which enhance or improve the quality of life for the U.S. Coast Guard and/or military communities;

SECTION 3: Annually, on January 1st, the Board shall submit a report to the governor regarding the status of and/or progress achieved on the issues addressed in Section 2 of this Order.

SECTION 4: The Board shall be composed of a maximum of twenty-five (25) members, who shall be appointed by and serve at the pleasure of the governor.

A. The voting members of the Board shall be selected as follows:

1. The adjutant general of Louisiana, or the adjutant general's designee;

2. The president of the Louisiana State Senate, or the president's designee;

3. The speaker of the Louisiana House of Representatives, or the speaker's designee;

4. The secretary of the Department of Economic Development, or the secretary's designee;

5. The secretary of the Department of Veterans Affairs, or the secretary's designee;

6. The chair of the Louisiana Employer Support of the Guard and Reserve, or the chair's designee;

7. One (1) representative each from the Greater New Orleans, Ft. Polk-Central Louisiana, Barksdale/Bossier/Shreveport, and the Lake Charles area that have established ongoing relationships with the military from their community;

8. One (1) representative for Louisiana businesses and industries from the areas described in subsection 4(A)(7); and

9. One (1) representative of local governments from the areas described in subsection 4(A)(7).

B. The non-voting members of the Board shall be selected as follows:

1. The commander, Joint Readiness Training Center (JRTC) and Ft. Polk, or the commander's designee;

2. The commander, Eighth Air Force, or the commander's designee;

3. The commander, Naval Forces Reserve, or the commander's designee;

4. The commander, Marine Forces Reserve, or the commander's designee;

5. The commander, Eighth Coast Guard District, or the commander's designee;

6. The commander, 377th Theater Army Area Command, or the commander's designee; and

7. The commander, U.S. Army Corps of Engineers, Mississippi River Valley Division, or the commander's designee.

C. The Board may create subcommittees composed of Board members, non-Board members, and/or both Board members and non-Board members, which meet in accordance with the open meetings law, R.S. 42:4.1, *et seq.*

SECTION 5: The governor shall appoint the chair and vice-chair of the Board from its membership. All other

officers, if any, shall be elected by the Board from its membership.

SECTION 6: The Board shall meet at regularly scheduled quarterly meetings, and at the call of the chair.

SECTION 7: Support staff, facilities, and resources for the Board shall be provided by the Louisiana Department of Economic Development.

SECTION 8:

A. Board members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Board.

B. Board members who are employees or elected public officials of the state of Louisiana or a political subdivision of the state of Louisiana may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing department, agency and/or office or elected office.

C. Board members who are also a member of the Louisiana Legislature may seek a per diem from the Louisiana State Senate or House of Representatives, as appropriate, for their attendance at Board meetings and/or services on the Board.

SECTION 9: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Board in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 15th day of October, 2004.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0411#073

**EXECUTIVE ORDER KBB 04-42**

Bond Allocation Caddo-Bossier Parishes Port Commission

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2004-21 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2004 (hereafter "the 2004 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2004 Ceiling; and

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

WHEREAS, the Caddo-Bossier Parishes Port Commission has requested an allocation from the 2004

Ceiling to be used to finance the acquisition, construction, renovation, and equipping of a facility to clean and process industrial wastewater located at the Port of Shreveport-Bossier, parish of Caddo, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2004 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$5,500,000	Caddo-Bossier Parishes Port Commission	Arkla Disposal, LLC

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

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2004, provided that such bonds are delivered to the initial purchasers thereof on or before December 21, 2004.

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

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

SECTION 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 15th day of October, 2004.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0411#074

**EXECUTIVE ORDER KBB 04-43**

Louisiana's Plan For Choice in Long-Term Care

WHEREAS, it is desirable that Louisiana residents, who are elderly or have disabilities, and their families, have choices from among a broad range of services and supports

to most effectively meet their needs in their homes, community settings, facilities, or other residential settings;

WHEREAS, the state of Louisiana is committed to providing a full array of quality, long-term care services for the elderly and persons with disabilities, within resources available to the state, and recognizes that such supports and services advance the best interests of all Louisiana citizens;

WHEREAS, direction has been provided to states under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq. and the United States Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999);

WHEREAS, the President's Executive Order 13217, part of the New Freedom Initiative, recognizes the need to have long-term care systems that offer community-based alternatives to foster independence and participation in the community for persons of all ages with disabilities;

WHEREAS, Louisiana is committed to developing a long-term care system that offers the elderly and people with disabilities the opportunity to enjoy full lives of inclusion, productivity, and self-determination;

WHEREAS, in March, 2004, Louisiana held a Health Care Summit and formed the Health Care Reform Panel to assist in restructuring Louisiana's health care delivery system to meet the needs of its citizens by providing quality health care services in a cost effective manner;

WHEREAS, Louisiana has expanded its initiatives to provide further opportunities for the elderly and persons with disabilities to live productively in settings of their choice, and has done so through the pursuit of federal grants, Medicaid home and community-based service waivers, State Plan optional services, and changes to policies and procedures that increase the array of service options available to enable people to choose services that best meet their needs and preferences;

WHEREAS, accessible, affordable, and integrated housing; accessible, affordable transportation; and educational, vocational, and a vocational opportunities are integral components of inclusion and independence for the elderly and persons with disabilities; and

WHEREAS, the citizens of the state of Louisiana will best be served by the adoption of a state policy on long-term care, a plan that enhances choice within Louisiana's long-term care system that is based on national best practices as well as broad stakeholder input;

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

SECTION 1: The Department of Health and Hospitals shall be the lead agency and shall convene the Department of Social Services, the Governor's Office of Elderly Affairs, and the Governor's Office of Disability Affairs to develop a plan identifying administrative actions for immediate implementation and legislative actions for consideration in the 2005 Regular Session of the Louisiana Legislature (hereafter "Plan for Immediate Action"). A draft Plan for Immediate Action for reform of Louisiana's long-term care system shall be submitted to the Health Care Reform Panel for consideration at its December 2004 meeting. There shall be presentations made to the Regional Healthcare Consortia and other bodies as appropriate. The Plan for Immediate Action shall then be submitted to the Health Care Reform

Panel for final review and comment at its March 2005 meeting prior to submission to the governor for consideration and approval.

#### SECTION 2:

A. Upon completion of the Plan for Immediate Action, the Department of Health and Hospitals shall be the lead agency and shall convene the Department of Social Services, the Department of Transportation and Development, the Department of Public Safety and Corrections, the Department of Labor, the Department of Education, the Department of Veterans Affairs, the Department of Economic Development, the Governor's Office of Elderly Affairs, the Governor's Office of Disability Affairs, the Louisiana Housing Finance Agency, and the Louisiana State Board of Nursing (hereafter "Agencies"), to develop a comprehensive and effective plan for reform of Louisiana's long-term care system that may reasonably be achieved by 2010 with the resources that are available to the state. The comprehensive plan shall be presented to the Health Care Reform Panel no later than December, 2005. Upon obtaining input from the Health Care Reform Panel, this comprehensive plan shall be presented to the governor for consideration and approval and shall thereafter constitute Louisiana's Plan for Choice in Long-Term Care (hereafter "Louisiana's Plan").

B. Louisiana's Plan shall include, but is not limited to, the following:

1. A review and analysis of all laws, rules and regulations, programs and/or policies of the state of Louisiana and/or any of the departments, commissions, boards, agencies, and/or offices in the executive branch thereof, which pertain to long-term supports and services, to identify barriers to choice and make recommendations that would enable residents of Louisiana who require assistance to have more choices of where services are provided;

2. Proposals for administrative restructuring, programs, policies, procedures and/or partnerships to improve the long-term care delivery system, including non-medical services like transportation, housing, education and vocational assistance that are necessary if long-term care recipients are to be fully integrated participants in the lives of their communities, which are achievable within the resources that are available to the state;

3. Analysis of programmatic, procedural and fiscal impacts of any policies/practices recommended for adoption;

4. Exploration of means to secure increased funding for community-based services for persons needing long-term assistance; and

5. Recommendations on strategies to educate the public as to long-term care services and methods of accessing long-term care services, as well as to the need for personal responsibility in financial planning for future long-term care needs.

SECTION 3: In developing both the Plan for Immediate Action and the Louisiana's Plan, the Agencies will:

1. seek input from a broad range of stakeholders, including consumers, their family members, and their advocates, as well as providers of both institutional and community-based services;

2. consider all existing studies, reports, and settlement agreements related to Louisiana's system of long-term services and supports;

3. consider all proposals within the context of resources available to the state;

4. take advantage of relevant work already underway and/or completed by the Agencies and various statewide task forces, councils, commissions, and other bodies that have convened to address issues related to longterm care; and

5. seek consultation from nationally recognized experts and officials in other states in order to identify promising and/or proven practices that are consumer-centered, research-based, cost effective, and applicable to improving accessibility, capacity, quality, and financing across all longterm care services and supports; and to increasing community-based options for long-term care in Louisiana.

SECTION 4: Upon approval of Louisiana's Plan, the Agencies will meet quarterly to review progress in the implementation of the plan and will revise the plan as needed based on lessons learned, stakeholders input, and advances in best practices for long-term care delivery.

SECTION 5: The secretary of the Department of Health and Hospitals, as chair of the Governor's Health Care

Reform Panel, shall submit the Plan for Immediate Action and Louisiana's Plan to the governor for consideration and approval.

SECTION 6: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the implementation of the provisions of this Order.

SECTION 7: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 22nd day of October, 2004.

Kathleen Babineaux Blanco  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0411#075

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Economic Development Office of the Secretary

Governor's Economic Development  
Rapid Response Program  
(LAC 13:V.Chapter 2)

The Louisiana Department of Economic Development, Office of the Secretary, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), adopts the following rules of the Governor's Economic Development Rapid Response Program under the authority of R.S. 36:104 and 36:108. This Rule, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective November 1, 2004, and shall remain in effect for the maximum period allowed under the Act, or until the adoption of a permanent Rule, whichever occurs first.

The Department of Economic Development, Office of the Secretary, has found an immediate need to provide rules regarding the creation and regulation of the Governor's Economic Development Rapid Response Program to provide for immediate funding of all or a portion of economic development projects in order to successfully secure the creation or retention of jobs by a business entity in Louisiana under such circumstances as may be determined by the Secretary of Economic Development and the Governor of Louisiana. Without this Emergency Rule the public welfare may be harmed as the result of the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

### Title 13

## ECONOMIC DEVELOPMENT

### Part V. Office of the Secretary

#### Chapter 2. Governor's Economic Development Rapid Response Program

##### §201. Purpose

A. The purpose of the program is to provide for immediate funding of all or a portion of economic development projects in order to successfully secure the creation or retention of jobs by a business entity in Louisiana under such circumstances as may be determined by the Secretary of Economic Development and the Governor of Louisiana.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:

##### §203. Definitions

A. The following definitions shall be applicable to this program:

*Applicant(s)* The company or business entity, that pursuant to applicable Louisiana law, is duly authorized to do business in Louisiana and is in good standing as certified by the office of the Louisiana Secretary of State, and/or any

public entity requesting financial assistance from LED under this program that represents the set of circumstances through which funding may be applicable under these rules.

*Award* Funding of financial assistance for eligible applicants under this program.

*Award Agreement* The contract between the company and/or the public entity, and LED 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.

*Company* A company or business entity, duly authorized to do business in Louisiana and in good standing as certified by the Louisiana Secretary of State, that pursuant to these rules may be eligible to seek the funding of a project.

*Department* The Louisiana Department of Economic Development.

*Economic Development Project* The undertaking for which an award is granted that, under the circumstances presented, provides the opportunity for immediate funding of a project or portion of a project that will serve to finalize the commitment of a business entity to either the creation or retention of jobs in Louisiana.

*LED* The Louisiana Department of Economic Development.

*Program* The Governor's Economic Development Rapid Response Program that is undertaken by LED, pursuant to these rules and an award agreement with the Applicant(s) that serves the purposes of obtaining or retaining an Economic Development Project.

*Project* Economic activity that, in whole or in part, as determined by the Secretary of Economic Development and the Governor of Louisiana, will result in the creation or retention of jobs and for which assistance is requested under this program as a decisive influence in the decision of an entity to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana in such a manner as will create or retain jobs.

*Public Entity* The public or quasi-public entity that pursuant to these rules, may be eligible to seek funding for a project or that may, with a company, apply for funding pursuant to these rules or that, pursuant to the request of LED, may be responsible for engaging in the award agreement and pursuant thereto, for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

*Secretary* The Secretary of the Department of Economic Development.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:

##### §205. General Principles

A. The following general principles will direct the administration of the Governor's Economic Development Rapid Response Program:



1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana and the Secretary and governor have the discretion to determine whether or not each particular application meets the primary criteria for the award as provided herein, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of award status.

2. The economic benefit of the award to the state must equal or exceed the value of the award to the recipient.

3. The immediate nature of the award, and the competitive circumstances, as well as the need for and immediate use of the funds granted pursuant to the award must reasonably be expected to be the significant factor in a company's location, investment, retention and/or expansion decisions, and the award agreements entered into pursuant to this program shall reflect a commitment by the recipient of the award to the creation and retention of jobs and other economic consequences as represented in the application for the award and shall include such provisions as will protect the state's investment in the award in the event that the recipient of the award fails to meet its representations.

4. The state anticipates negotiating with each company seeking an award based on the individual merits of each project, with the goal of seeking the best return on investment for the state's citizens over the longest possible period of time.

5. Contracts for awards will contain "clawback" (or refund) provisions to protect the State in the event of a default.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:

#### **§207. Eligibility**

A. An eligible application for the award must meet the general principles set forth above and the criteria set forth below.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED in which the company is in default and/or is not in compliance.

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

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

2. This provision shall not apply, however, 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 the above business enterprises, provided that retail sales, hospitality services and gaming activities are not provided directly and personally to individuals in any such facilities.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:

#### **§209. Criteria**

A. These rules seek to maximize both the economic development from a particular award pursuant to this program and to more efficiently utilize taxpayer money in pursuing the goals of economic development.

B. Among the factors that may be taken into account in the review of award requests are the following:

1. actual local governmental commitment to the project (including sharing of responsibility for the company's compliance with the terms and conditions of the award);

2. availability of other federal, state, local or private funding programs for the project;

3. jobs created, jobs retained, company investment prior to the request for the project and company commitment to match funds that will equal or exceed the amount of the grant;

4. company membership in and utilization of cooperative organizations for industry best practices and improvement;

5. evaluation of overall industry performance in the context of the goals of *Louisiana: Vision 2020*;

6. compelling evidence that the award, if granted, will retain or create jobs and that the award, when committed and implemented, needs immediate funding and is the final necessary commitment to secure the project;

7. the period of time that the company will commit to maintain its new and/or retained jobs; and

8. the terms of the "clawback" (or refund) provisions, in the event of a default.

C. Representation as to the applicant's need for the funds, as well as the ability to put the funds to use after the award is granted will also be an important consideration in the grading of a particular application. Entry into a contractual agreement and the use of the funds within a specified period after the award is granted will be a factor in the department's recommendation to the governor as to conditions for the award.

D. The department will pursue a policy of negotiation of the award with the award applicant in order to assure that only necessary funds that are supported by evidence of need, availability and use, as well as commitment to, and likely success of the project, will arise from the final approval of the project in accordance with departmental recommendations upon which the award is conditioned and will be administered by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:

#### **§211. Application Procedure**

A. The applicant(s) must submit an application to LED which shall contain, but not be limited to, the following:

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

2. preliminary or final construction, operation or other plans and a timetable for the project, including the time period for which the rapid response funding is necessary;

3. evidence as to the need for immediate funding;

4. a detailed description of the expenditure of funds sought for the project;

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

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

7. the period of time for which the company will commit to maintain the new and/or retained jobs;

8. the application must demonstrate adherence to and overall consistency with the general principles and criteria set forth above; and

9. the application is to set forth facts and representations that in addition to those required by Paragraphs 1 through 8 above, fulfill the general principles of §205, the eligibility requirements under §207, and meet the criteria set forth in §209 above, in order to qualify for an award under this program.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:

### **§213. Submission and Review Procedure**

A. Applicants must submit their completed application to LED. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, cluster directors, other staff of the Department of Economic Development and other state agencies as needed in order to evaluate the project in the context of these rules and with respect to the overall economic well-being of the state and local communities. LED may determine that advice of a third party may be appropriate to its analysis of the application and may undertake such a review as part of this procedure.

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 will be prepared by LED and must establish that the award hereunder is in accordance with the requirements of Article VII, Section 14 of the Louisiana Constitution.

C. Upon determination that an application meets the general principles of §205, the eligibility requirements under §207, and meets the criteria set forth for this program under §209, LED staff will then make a recommendation to the governor. The application will then be reviewed and approved or rejected by the governor.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:

### **§215. General Award Provisions**

A. Agreement resulting from the expedited procedures for the award shall demonstrate the intent of the company, the public entity, and LED to enter into an award agreement consistent with the constitution and laws of the state of Louisiana and with these rules.

1. An award agreement will be executed between LED and the applicant, and may include as a party the public entity through which the funding is to be administered. The agreement will specify the performance objectives expected of the company and/or the public entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, commitments as to job

retention and/or to time lines for investment and job creation. Under the agreement, the public entity or LED will oversee the progress of the project. LED will disburse funds to the public entity and/or company in a manner determined by LED and there shall be appropriate securitization of the award in a manner consistent with normal commercial practices.

2. Eligible project costs may include an advance of funds to provide the necessary commitment that will, in the opinion of the LED and governor, provide for the project and may include matters that in whole or in part provide for engineering and architectural expenses; site acquisition costs; site preparation costs; construction expenses; building materials; office expenses including furniture, fixtures, computers, consumables, transportation equipment, rolling stock or equipment; relocation expenses; training expenses, including pre-employment training, assessments, classroom training, on-the-job training, and other justifiable training expenses; and any other costs. Commitment to funding of these costs may be made, provided that the entity receiving these funds shall comply with the public bid laws to the extent that such laws are applicable.

3. Project costs ineligible for award funds include, but are not limited to, matters such as recurrent expenses associated with the project (e.g., operation and maintenance costs) and 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 and the refinancing of existing debt, public or private.

4. LED and/or the governor, 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.

5. Award funds will be available to the public entity and/or company on a reimbursement basis following submission of required documentation to LED as set forth in the award agreement between the parties.

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

a. the LED and the applicant(s) have entered into an Award agreement that is in fulfillment of these rules and is in accordance with the representations made by the applicant(s) for the award; and

b. confirmation is received that all closing conditions specified in the award agreement and any other necessary preconditions to the funding of the award or the implementation of the project have been satisfied.

7. The award recipient shall be required to submit progress reports, describing the progress toward the performance objectives specified in the award agreement. Progress reports shall include a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments.

8. In the event a party to the award agreement fails to meet its performance objectives specified in its award agreement with LED, LED 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 or as may be otherwise provided by the award agreement between the parties.

9. In the event an applicant or other person is reasonably believed to have filed a false statement in its application or in a progress report or other filing, the LED shall immediately notify the district attorney of the parish of East Baton Rouge and may also notify any other appropriate law enforcement personnel so that an investigation may be undertaken with respect to the application of state funds to the project.

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:

Michael J. Olivier  
Secretary

0411#023

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of Environmental Assessment

#### Expedited Penalty Agreement (LAC 33:I.801, 803, 805, and 807)(OS054E2)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement expedited penalty agreements. This is a renewal of Emergency Rule OS054E1, which was effective on July 8, 2004, and published in the *Louisiana Register* on July 20, 2004.

This Emergency Rule will abate the delay in correcting minor and moderate violations of the Environmental Quality Act. Delays in enforcement reduce the effectiveness of the action, utilize unnecessary resources, and slow down the enforcement process. In the past three years alone, the Enforcement Division has received 8,139 referrals and has issued 4,259 actions. Currently strained budget and resource issues pose imminent impairment to addressing minor and moderate violations. This Rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality recommended this action as a pilot program. The legislature approved the report and passed Act 1196 in the 2003 Regular Session allowing the department to promulgate rules for the program. This Emergency Rule allows the operation of the

pilot program to commence immediately, without the delay and inflexibility of a permanent rule. It will also allow the department to gather information to formulate a long-term rule and to evaluate the environmental and public health benefits and the social and economic costs of such a program in order to justify these requirements for the permanent Rule. This version of the Emergency Rule makes amendments to the original Rule and adds new violations that have been identified for use in the pilot program.

This Emergency Rule is effective on November 5, 2004, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS054E2 you may contact the Regulation Development Section at (225) 219-3550.

## Title 33

## ENVIRONMENTAL QUALITY

### Part I. Office of the Secretary

#### Subpart 1. Departmental Administrative Procedures

#### Chapter 8. Expedited Penalty Agreement

#### §801. Definitions

*Agency Interest Number*—A site-specific number assigned to a facility by the department that identifies the facility in a distinct geographical location.

*Qualifying Permit Parameter*—For the purposes of these regulations: total organic carbon (TOC), chemical oxygen demand (COD), dissolved oxygen (DO), 5-day biochemical oxygen demand (BOD<sub>5</sub>), 5-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), total suspended solids (TSS), fecal coliform, and/or oil and grease.

*Expedited Penalty Agreement*—A predetermined penalty assessment issued by the department and agreed to by the respondent, which identifies violations of minor or moderate gravity as determined by LAC 33:I.705, caused or allowed by the respondent and occurring on specified dates, in accordance with R.S. 30:2025(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

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

#### §803. Purpose

A. The purpose of this Chapter is to provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty assessments in appropriate cases. This Chapter:

1. addresses common violations of minor or moderate gravity;
2. quantifies and assesses penalty amounts for common violations in a consistent, fair, and equitable manner;
3. ensures that the penalty amounts are appropriate, in consideration of the nine factors listed in R.S. 30:2025(E)(3)(a);
4. eliminates economic incentives for noncompliance for common minor and/or moderate violations; and
5. ensures expeditious compliance with environmental regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

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

## §805. Applicability

A. Limit of Penalty Amount. The total penalty assessed for the expedited penalty agreement shall not exceed \$1,500 for one violation or \$3,000 for two or more violations per penalty assessed.

B. Departmental Discretion. The secretary of the department or his designee, at his sole discretion, may propose an expedited penalty agreement for any violation described in LAC 33:I.807.A and considered in accordance with Subsection E of this Section. The expedited penalty agreement shall specify that the respondent waives any right to an adjudicatory hearing or judicial review regarding violations identified in the signed expedited penalty agreement. The respondent must concur with and sign the expedited penalty agreement in order to be governed by this Chapter and R.S. 30:2025(D).

C. Notification to the Respondent. The expedited penalty agreement shall serve as notification to the respondent of the assessed penalty amount for the violations identified on the specified dates.

D. Certification by the Respondent. By signing the expedited penalty agreement, the respondent certifies that all cited violations in the expedited penalty agreement have been or will be corrected, and that the assessed penalty amount has been or will be paid, within 30 days of receipt of the expedited penalty agreement.

E. Nine Factors for Consideration. An expedited penalty agreement may be used only when the following criteria for the nine factors for consideration are satisfied.

1. The History of Previous Violations or Repeated Noncompliance. The violation identified in the expedited penalty agreement is not the same as or similar to a violation identified in any compliance order, penalty assessment, settlement agreement, or expedited penalty agreement issued by the department within the previous two years for any particular agency interest number. Site-specific enforcement history considerations will only apply to expedited penalty agreements.

2. The Nature and Gravity of the Violation. The violation identified is considered to be minor or moderate with regard to its nature and gravity.

a. The violation identified in the expedited penalty agreement deviates somewhat from the requirements of statutes, regulations, or permit; however, the violation exhibits at least substantial implementation of the requirements.

b. The violation identified is isolated in occurrence and limited in duration.

c. The violation is easily identifiable and corrected.

d. The respondent concurs with the violation identified and agrees to correct the violation identified and any damages caused or allowed by the identified violation within 30 days of receipt of the expedited penalty agreement.

3. The Gross Revenues Generated by the Respondent. By signing the expedited penalty agreement, the respondent agrees that sufficient gross revenues exist to pay the assessed penalty and correct the violation identified in the expedited penalty agreement within 30 days of receipt of the expedited penalty agreement.

4. The Degree of Culpability, Recalcitrance, Defiance, or Indifference to Regulations or Orders. The respondent is

culpable for the violation identified, but has not shown recalcitrance, defiance, or extreme indifference to regulations or orders. Willingness to sign an expedited penalty agreement and correct the identified violation within the specified timeframe demonstrates respect for the regulations and a willingness to comply.

5. The Monetary Benefits Realized Through Noncompliance. The respondent's monetary benefit from noncompliance is not considered to be significant with regard to the violation identified. The respondent's monetary benefit from noncompliance for the violation identified shall not exceed the assessed penalty amount for the violation identified. The intent of these regulations is to eliminate economic incentives for noncompliance.

6. The Degree of Risk to Human Health or Property Caused by the Violation. The violation identified does not present actual harm or substantial risk of harm to the environment or public health. The violation identified is isolated in occurrence or administrative in nature, and the violation identified has no measurable detrimental effect on the environment or public health.

7. Whether the Noncompliance or Violation and the Surrounding Circumstances Were Immediately Reported to the Department and Whether the Violation or Noncompliance Was Concealed or There Was an Attempt to Conceal by the Person Charged. Depending upon the type of violation, failure to report may or may not be applicable to this factor. If the respondent concealed or attempted to conceal any violation, the violation shall not qualify for consideration under these regulations.

8. Whether the Person Charged Has Failed to Mitigate or to Make a Reasonable Attempt to Mitigate the Damages Caused by the Noncompliance or Violation. By signing the expedited penalty agreement, the respondent states that the violation identified and the resulting damages, if any, have been or will be corrected. Violations considered for expedited penalty agreements are, by nature, easily identified and corrected. Damages caused by any violation identified are expected to be nonexistent or minimal.

9. The Costs Of Bringing and Prosecuting an Enforcement Action, Such as Staff Time, Equipment Use, Hearing Records, and Expert Assistance. Enforcement costs for the expedited penalty agreement are considered minimal. Enforcement costs for individual violations are covered with the penalty amount set forth for each violation in LAC 33:I.807.

F. Schedule. The respondent must return the signed expedited penalty agreement and payment for the assessed amount to the department within 30 days of the respondent's receipt of the expedited penalty agreement. If the department has not received the signed expedited penalty agreement and payment for the assessed amount by the close of business on the thirtieth day after the respondent's receipt of the expedited penalty agreement, the expedited penalty agreement may be withdrawn at the department's discretion.

G. Extensions. If the department determines that compliance with the cited violation is technically infeasible or impracticable within the initial 30-day period for compliance, the department, at its discretion, may grant one 30-day extension in order for the respondent to correct the violation cited in the expedited penalty agreement

H. Additional Rights of the Department

1. If the respondent signs the expedited penalty agreement, but fails to correct the violation identified, pay the assessed amount, or correct any damages caused or allowed by the cited violation within the specified timeframe, the department may issue additional enforcement actions including, but not limited to, a civil penalty assessment and may take any other action authorized by law to enforce the terms of the expedited penalty agreement.

2. If the respondent does not agree to and sign the expedited penalty agreement, the department may notify the respondent that a formal civil penalty is under consideration. The department may then pursue formal enforcement action against the respondent in accordance with R.S. 30:2025(C), 2025(E), 2050.2, and 2050.3.

I. Required Documentation. The department shall not propose any expedited penalty agreement without an affidavit, inspection report, or other documentation to establish that the respondent has caused or allowed the violation to occur on the specified dates.

J. Evidentiary Requirements. Any expedited penalty agreement issued by the department shall notify the respondent of the evidence used to establish that the respondent has caused or allowed the violation to occur on the specified dates.

K. Public Enforcement List. The signed expedited penalty agreement is a final enforcement action of the department and shall be included on the public list of enforcement actions referenced in R.S. 30:2050.1(B)(1).

L. Date of Issuance. When an expedited penalty agreement is issued in conjunction with a Notice of Potential Penalty, the following issuance dates shall apply.

1. If the respondent does not wish to participate in the expedited penalty agreement program, the issuance date for the Notice of Potential Penalty portion of the document shall be 30 days after the respondent receives the document.

2. If the respondent does wish to participate in the expedited penalty agreement program, the issuance date for the expedited penalty agreement portion of the document shall be the date the administrative authority signs the document for the second, and final, time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

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

**§807. Types of Violations and Expedited Penalty Amounts**

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to provide timely written notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition	LAC 33:I.3925.A	\$300	per day
Air Quality			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports	LAC 33:III.501.C.4	\$500	per occurrence
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable	LAC 33:III.919	\$500	per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable	LAC 33:III.5107	\$500	per occurrence
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne	LAC 33:III.1305.A	\$250	per occurrence
Failure to provide notice of change of ownership within 90 days after the change	LAC 33:III.517.G	\$200	per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit	LAC 33:III.501.C.4	\$250	per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit	LAC 33:III.501.C.4	\$500	per occurrence
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit	LAC 33:III.501.C.4	\$750	per occurrence/ emission point

Expedited Penalties			
Violation	Citation	Amount	Frequency
All Media			
Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition	LAC 33:I.3917.A	\$300	per day

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date	LAC 33:III.507.E.4	\$1,000	per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116	LAC 33:III.2116.F	\$250	per occurrence
Failure to submit an initial perchloroethylene inventory report	LAC 33:III.5307.A	\$250	per occurrence
Failure to submit perchloroethylene usage reports by July 1 for the preceding calendar year	LAC 33:III.5307.B	\$250	per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to have at least one person trained as required by the regulations	LAC 33:III.2132.C	\$300	per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter	LAC 33:III.2132.D	\$500	per occurrence
Failure to post operating instructions on each pump	LAC 33:III.2132.E	\$100	per occurrence
Failure to maintain equipment as defined in LAC 33:III.2132.F.1-2	LAC 33:III.2132.F.1-2	\$300	per occurrence
Failure to tag defective equipment "out of order"	LAC 33:III.2132.F.3	\$500	per occurrence
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request	LAC 33:III.2132.G.1-7	\$300	per compliance inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site	LAC 33:III.905	\$100	per occurrence
Hazardous Waste			
Used Oil			
Failure of a used oil generator to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4013.E	\$500	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure of a used oil transfer facility to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4035.H	\$500	per occurrence
Failure of a used oil processor or re-refiner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4049.G	\$500	per occurrence
Failure of a used oil burner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4069.G	\$500	per occurrence
Solid Waste			
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority	LAC 33:VII.10509.B	\$200	per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate	LAC 33:VII.10509.C	\$200	per occurrence
Storing tires for greater than 365 days	LAC 33:VII.10509.E	\$200	per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority	LAC 33:VII.10509.G	\$200	per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations	LAC 33:VII.10519.A	\$300	per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire	LAC 33:VII.10519.B	\$100	per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified	LAC 33:VII.10519.D	\$100	per occurrence
Failure to post required notifications to the public	LAC 33:VII.10519.E	\$100	per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee	LAC 33:VII.10519.F	\$100	per occurrence
Failure to keep waste tires or waste tire material covered as specified	LAC 33:VII.10519.H	\$200	per occurrence



Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to segregate waste tires from new or used tires offered for sale	LAC 33:VII.10519.M	\$200	per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires	LAC 33:VII.10533.A	\$200	per occurrence
Failure to maintain completed manifests for three years and have them available for inspection	LAC 33:VII.10533.D	\$200	per occurrence
Failure to collect appropriate waste tire fee for each new tire sold	LAC 33:VII.10519.C, 10535.B	\$200	per occurrence
Water Quality			
Failure to properly operate and maintain a facility:			
1. Failing to provide disinfection at any applicable sewage treatment plant	LAC 33:IX.2701.E	\$200	per occurrence
2. Failing to operate/maintain backup or auxiliary systems within a treatment system	LAC 33:IX.2701.E	\$200	per occurrence
3. Failing to implement adequate laboratory controls and quality assurance procedures	LAC 33:IX.2701.E	\$200	per occurrence
4. Allowing excessive solids to accumulate within a treatment system	LAC 33:IX.2701.E	\$200	per occurrence
5. Allowing sample holding times to expire before analyzing any sample and failing to follow approved methods when collecting and analyzing samples	LAC 33:IX.2701.J.4	\$200	per occurrence
Failure to sample any permit parameter in accordance with an LPDES permit	LAC 33:IX.2701.A	\$100	per permit parameter
Failure to submit Discharge Monitoring Reports (DMRs):			
1. Failing to submit DMRs, for any outfall, required by any LPDES individual permit	LAC 33:IX.2701.L.4.a	\$200	per submittal (per outfall)
2. Failing to submit DMRs, for any outfall, required by any LPDES general permit	LAC 33:IX.2701.L.4.a	\$100	per submittal (per outfall)
Exceedance of LPDES permit effluent limitations:			
1. Exceeding the daily maximum or weekly average concentration permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$150	per permit parameter (per exceedance)
2. Exceeding a monthly average concentration permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$300	per permit parameter (per exceedance)

Expedited Penalties			
Violation	Citation	Amount	Frequency
3. Exceeding a daily maximum or weekly average mass loading permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$200	per permit parameter (per exceedance)
4. Exceeding a monthly average mass loading permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$400	per permit parameter (per exceedance)
5. Discharging effluent outside of the permitted range for pH (grab samples only)	LAC 33:IX.2701.A	\$150	per grab sample (per exceedance)
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility	LAC 33:IX.905	\$500	per occurrence
2. Failing to implement any component of an SPC plan	LAC 33:IX.905	\$100	per occurrence
Failure to submit certain reports as required by an LPDES permit, including storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports	LAC 33:IX.2701.A	\$300	per required submittal
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Plan (SWPPP), Pollution Prevention Plan (PPP), or Best Management Practices/Plan (BMP) as required by an LPDES permit	LAC 33:IX.2701.A	\$500	per occurrence
Failure to submit a Notice of Intent for coverage under the LPDES Storm Water Permit for Construction Activities or under the LPDES Storm Water Multi-Sector General Permit	LAC 33:IX.2511.C.1	\$1,000	per occurrence
Failure to provide notification of facility changes as required by an LPDES permit	LAC 33:IX.2701.L.1	\$300	per occurrence
Failure to submit a noncompliance report required by an LPDES individual permit	LAC 33:IX.2701.L.7	\$200	per occurrence
Failure to submit a noncompliance report required by an LPDES general permit	LAC 33:IX.2701.L.7	\$100	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
<b>Underground Storage Tanks</b>			
Failure to register existing or new USTs containing regulated substances	LAC 33:XI.301.A-B	\$300	per occurrence
Failure to certify and provide required information on the department's approved registration form	LAC 33:XI.301.B.1-2	\$300	per occurrence
Failure to notify the Office of Environmental Services, Permits Division within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility	LAC 33:XI.301.C.1-3	\$300	per occurrence
Failure to provide corrosion protection to tanks and/or piping that routinely contain regulated substances using one of the specified methods	LAC 33:XI.303.A.1-2	\$500	per occurrence
Failure to provide spill and/or overfill prevention equipment as specified	LAC 33:XI.303.A.3 and/or B.4	\$300	per occurrence
Failure to upgrade existing UST systems to new system standards as specified	LAC 33:XI.303.B	\$300	per occurrence
Failure to pay fees by the required date	LAC 33:XI.307.D	\$200	per occurrence
Failure to report, investigate, and/or clean up any spills and overfills	LAC 33:XI.501.B	\$1,500	per occurrence
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground	LAC 33:XI.503.A	\$300	per occurrence
Failure to have UST systems equipped with cathodic protection systems inspected for proper operation as specified	LAC 33:XI.503.B	\$500	per occurrence
Failure to inspect UST systems with impressed current cathodic protection systems every 60 days to ensure that the equipment is running properly	LAC 33:XI.503.C	\$300	per occurrence
Failure to comply with recordkeeping requirements	LAC 33:XI.503.D	\$150	per occurrence
Failure to meet requirements for repairs to UST systems	LAC 33:XI.507	\$300	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them within 24 hours after a request	LAC 33:XI.509	\$300	per occurrence
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems and/or failure to notify the Office of Environmental Compliance when a leak detection method indicates that a release may have occurred	LAC 33:XI.703.A.1-2	\$1,500 and completion of a department-sponsored compliance class	per occurrence
Failure to satisfy the additional requirements for petroleum UST systems as specified	LAC 33:XI.703.B	\$100	per occurrence
Failure to maintain release detection records	LAC 33:XI.705	\$150	per occurrence
Failure to report any suspected release to the Office of Environmental Compliance within 24 hours after becoming aware of the occurrence	LAC 33:XI.707	\$500	per occurrence

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

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

Mike D. McDaniel, Ph.D.  
Secretary

0411#029

## DECLARATION OF EMERGENCY

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

Durable Medical Equipment Program Prosthetics and Orthotics, Artificial Eyes, Scleral Shell, and Related Services (LAC 50:XVII.1301-1305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:XVII.1301-1303 and amend 1305 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 final Rule, whichever occurs first.



The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to establish the reimbursement methodology for artificial eyes in the *Louisiana Register*, (Volume 27, Number 1). The bureau promulgated an emergency rule that adopted criteria for the authorization of artificial eyes, scleral shell, and related services and amended the reimbursement methodology (*Louisiana Register*, Volume 30, Number 8). This Emergency Rule is being promulgated to continue provisions contained in the August 20, 2004 Rule. This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to artificial eyes and related services.

Effective December 19, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing the authorization of artificial eyes, scleral shell and related services.

#### **Title 50**

### **PUBLIC HEALTH MEDICAL ASSISTANCE**

#### **Part XVII. Durable Medical Equipment**

##### **Subpart 3. Prosthetics and Orthotics**

#### **Chapter 13. Prosthetics and Orthotics**

##### **Subchapter A. Artificial Eyes, Scleral Shell, and Related Services**

#### **§1301. Introduction**

##### **A. Definitions**

*Artificial Eye or Ocular Prosthesis* A replacement for a missing or damaged, unsightly eye.

a. An artificial eye and related services are when an eyeball is removed and replacement, repair and/or upkeep of an artificial eye are necessary to maintain the contour of the face. It does not restore vision. There are two types of ocular prostheses:

- i. full ocular prosthesis; and
- ii. scleral shell.

*Full Ocular Prosthesis* Used for individuals who have the globe removed allowing for the fitting of a regular artificial eye.

*Related Services* Include polishing or resurfacing of ocular prosthetics, enlargements or reductions of ocular prosthetics, and fabrication or fitting of ocular conformer.

##### *Scleral Shell (or Shield)*

a. a custom-made, thin ocular prosthesis fitted directly over a blind and shrunken globe. It includes the iris (the colored part of the eye) and the sclera (the white part of the eye);

b. a term utilized to describe different types of hard scleral contact lenses. A shell fits over the entire exposed surface of the eye as opposed to a corneal contact lens which covers only the central nonwhite area encompassing the pupil and iris.

B. These procedures require prior authorization.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 31:

#### **§1303. Medical Necessity**

A. A scleral shell may be authorized when the medical criteria as stated in this Subchapter A are met.

B. An artificial eye and related services shall be approved if an eyeball is removed and replacement and

repair and/or upkeep of an artificial eye are necessary to maintain the contour of the face.

C. A scleral shell may, among other things, obviate the need for surgical enucleation and prosthetic implant and act to support the surrounding orbital tissue of an eye that has been rendered sightless and shrunken by inflammatory disease. In such a case, the device serves essentially as an artificial eye. In this situation, authorization of payment may be made for a scleral shell. Scleral shells are occasionally used in combination with artificial tears in the treatment of "dry eye" of diverse etiology. Tears ordinarily dry at a rapid rate, and are continually replaced by the lacrimal gland. When the lacrimal gland fails, the half-life of artificial tears may be greatly prolonged by the use of the scleral contact lens as a protective barrier against the drying action of the atmosphere. Thus, the difficult and sometimes hazardous process of frequent installation of artificial tears may be avoided. The lens acts in this instance to substitute, in part, for the functioning of the diseased lacrimal gland and may be covered as a prosthetic device in the rare case when it is used in the treatment of "dry eye."

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 31:

#### **§1305. Reimbursement**

A. Reimbursement for artificial eyes, scleral shells, and the related services shall be at 90 percent of the 2004 Medicare fee schedule or billed charges; whichever is the lesser amount. If not available at the established flat fee, the flat fee that shall be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1030 (May 2004), amended LR 31:

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

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

0411#061

### **DECLARATION OF EMERGENCY**

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

Home and Community Based Services Waivers  
New Opportunities Waiver (LAC 50:XXI.13707-13709)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt LAC 50:XXI.13707-13709 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social

Security Act. This Emergency Rule is being promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule on June 20, 1997 to establish the provisions governing the programmatic allocation of waiver slots for the Mental Retardation/Developmental Disabilities (MR/DD) Waiver (*Louisiana Register*, Volume 23, Number 6). The June 20, 1997 Rule was subsequently amended on May 20, 2002 to update the methodology for slot allocation in order to better meet the needs of citizens with disabilities in the state of Louisiana (*Louisiana Register*, Volume 28, Number 5). The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services promulgated a Rule implementing a new home and community based services waiver designed to enhance the support services available to individuals with developmental disabilities titled the New Opportunities Waiver (NOW) (*Louisiana Register*, Volume 30, Number 6). The New Opportunities Waiver replaced the MR/DD Waiver upon completion of the transition of all MR/DD participants to NOW.

The Appropriations Bill of the 2004 Regular Session of the Legislature allocated funds for the establishment of 66 emergency slots for NOW and mandated the development and enforcement of rules established under the Administrative Procedure Act to create an equitable and precise methodology for defining an emergency and the issuance of such slots. The bureau promulgated an Emergency Rule that established the provisions governing emergency waiver opportunities. In addition, the bureau repealed the rules governing programmatic allocation of MR/DD Waiver slots and adopted provisions to govern the programmatic allocation of waiver opportunities for NOW (*Louisiana Register*, Volume 30, Number 8). This Emergency Rule is being promulgated to continue provisions contained in the August 20, 2004 Rule.

This action is being taken to promote the health and welfare of those individuals with developmental disabilities by facilitating access to waiver services when the individual meets the criteria for an emergency waiver opportunity.

Effective December 19, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services repeals the May 20, 2002 rule and adopts the following provisions governing the programmatic allocation of waiver opportunities in the New Opportunities Waiver.

## **Title 50**

### **PUBLIC HEALTH/MEDICAL ASSISTANCE**

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

##### **Subpart 11. New Opportunities Waiver**

##### **Chapter 137. General Provisions**

##### **§13707. Programmatic Allocation of Waiver**

###### **Opportunities**

A. The Bureau of Community Supports and Services (BCSS) Request for Services Registry, hereafter referred to as "the registry," shall be used to evaluate individuals for waiver eligibility and shall be used to fill all waiver opportunities administered by the BCSS for persons with

mental retardation or developmental disabilities. BCSS shall notify, in writing, the next individual on the registry that a waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment. The individual shall then choose a case management agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for level of care determination. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next person on the registry shall be notified as stated above and the process continues until an eligible person is assigned the waiver opportunity. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified. By accepting a waiver opportunity, the person's name shall be removed from the registry.

B. Right of Refusal. A person may be designated inactive on the registry upon written request to BCSS. When the individual determines that he/she is ready to begin the waiver evaluation process, he/she shall request, in writing, to BCSS that his/her name be removed from inactive status and his/her original protected request date will be reinstated. In addition, persons who left a publicly operated developmental center after July 1, 1996 and who would have received a waiver opportunity, but chose another option at the time of discharge may request access to a waiver opportunity through the Office for Citizens with Developmental Disabilities (OCDD) regional administrative units. OCDD will verify that the individual meets the criteria for this option and will refer the person to BCSS for access to the next available waiver opportunity based on their date of discharge from the developmental center that will become their protected date.

C. Utilizing these procedures, waiver opportunities shall be allocated to the targeted groups cited as follows.

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

2. A minimum of 160 opportunities shall be available for people living at Pinecrest and Hammond Developmental Centers, or their alternates, who have chosen to be deinstitutionalized, have successfully completed the financial eligibility and medical certification process, and are certified for the waiver. In situations where alternates are used, an alternate shall be defined as a person who lives in a private ICF-MR facility and chooses to apply for waiver participation, is eligible for the waiver, and vacates a bed in the private ICF-MR facility for an individual being discharged from a publicly operated developmental center. A person living at Pinecrest or Hammond Developmental Center must be given freedom of choice in selecting a private ICF-MR facility placement in the area of his/her choice in order to designate the individual being discharged from the private ICF-MR facility as an alternate. The bed being vacated in the private ICF-MR facility must be

reserved for 120 days for the placement of a person being discharged from a publicly operated developmental center.

3. Except for those opportunities addressed in Paragraphs C.1, C.2, C.6 and C.7, opportunities vacated during the waiver year shall be made available to persons leaving any publicly operated ICF-MR or their alternates.

4. For those individuals who do not complete the transition process and move from a publicly operated developmental center during the 120-day reservation period, the waiver opportunity will be converted to a community opportunity for processing. Justification to exceed the 120-day reservation period may be granted by the BCSS as needed.

5. Opportunities not utilized by persons living in public ICFs-MR or their alternates shall be divided between:

- a. the next individual on the registry who is living in either a nursing facility or private ICF-MR; and
- b. the next individual on the registry who is residing in the community.

6. Ten waiver opportunities shall be used for qualifying persons with developmental disabilities who receive services from the Developmental Neuropsychiatric Program (DNP) administered by Southeast Louisiana State Hospital. This is a pilot project between the BCSS, the OCDD, and the Office of Mental Health (OMH) in the development of coordinated wrap around services for individuals who choose to participate in the waiver and meet the financial and medical eligibility requirements for the waiver.

7. Sixty-six waiver opportunities shall be used for qualifying individuals with developmental disabilities who require emergency waiver services. In the event that an opportunity is vacated, the opportunity will be returned to the emergency pool for support planning based on the process for prioritization. Once the 66 opportunities are filled, then supports and services based on the priority determination system will be identified by OCDD and addressed through other resources currently available for individuals with developmental disabilities.

8. Funded opportunities not addressed above shall be available for allocation to the next individual on the registry who successfully completes the financial eligibility and medical certification process and is certified for the waiver.

D. The Bureau of Community Supports and Services has the responsibility to monitor the utilization of waiver opportunities. At the discretion of the BCSS, specifically allocated opportunities may be reallocated to better meet the needs of citizens with disabilities in the State of Louisiana.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 31:

#### **§13709. Emergency Opportunities**

A. Requests for emergency waiver services shall be made through the regional administrative units (RAU), which are local and regional governmental entities responsible for implementing OCDD policies. When a request for emergency services is received, the RAU (which may be OCDD regional offices, human services districts, or human services authorities) shall complete a priority assessment that incorporates standardized operational procedures with standardized assessment tools to determine

the priority of the individual's need in a fair and consistent manner.

B. To be considered for emergency waiver supports, the individual must need long term supports, not temporary or short term supports. All of the following criteria shall be used in the determination of priority for an emergency opportunity.

1. Urgency of Need. The individual will require further assessment for emergency services if one of the following situations exists:

- a. the caregiver is unable or unwilling to continue providing care (i.e., the individual was dropped off and the caregiver was not found);
- b. death of the caregiver and there are no other available supports (i.e., other family member);
- c. the caregiver is incapacitated and there are no other available supports (i.e., other family member) due to physical or psychological reasons;
- d. intolerable temporary placement, immediate need for new placement; or
- e. other family crisis exists with no caregiver support available.

2. Level of Risk. The individual will be assessed to determine the risk to health and safety in areas of daily living, health care and behavioral supports if an emergency waiver opportunity is not made available. Level of risk will be categorized as follows.

- a. High Risk. The person's health or safety is at imminent risk without the requested developmental disability supports.
- b. Moderate Risk. The person has a potential risk of losing their current level of health or safety without the requested developmental disability supports.
- c. Low Risk. The person is at little or no risk of losing their current level of health or safety without the requested developmental disability supports.

3. Level of Unmet Needs. The person's needs shall be identified and assessed to determine the level to which the needs are being met.

4. Adaptive Service Level Determination. The person's service needs will be determined utilizing a standardized rating based on adaptive behavior levels.

5. Financial Resources Determination. Individual or family income shall be considered to determine whether it is adequate to meet unmet needs.

C. For individuals who appear to meet the criteria for an emergency waiver opportunity, the RAU will forward the Priority Ranked Score and all supporting documentation to the DHH emergency review team coordinator at OCDD in Baton Rouge to complete the determination process.

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 31:

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, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, Louisiana 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.

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

0411#063

## DECLARATION OF EMERGENCY

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

#### Hospital Program Transplant Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 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 on June 20, 1994 that adopted criteria for the reimbursement of inpatient hospital services (*Louisiana Register*, Volume 20, Number 6). The bureau subsequently promulgated another Rule on October 20, 1994 that established requirements for the reimbursement for specialized neonatal and pediatric intensive care, burn and transplant services (*Louisiana Register*, Volume 20, Number 10). The bureau promulgated an Emergency Rule that repealed and replaced the provisions in the June 20, 1994 and October 20, 1994 rules governing the coverage of transplant services provided by hospitals (*Louisiana Register*, Volume 30, Number 8). This Emergency Rule is being promulgated to continue provisions contained in the August 20, 2004 Rule. This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to transplant services.

#### Emergency Rule

Effective December 19, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals and replaces the provisions in the June 20, 1994 and October 20, 1994 rules governing the coverage of transplant services provided by hospitals.

#### Transplant Services

A. Transplants must be prior authorized by the department. Transplants (other than bone marrow and stem cell) must be performed in a hospital that is a Medicare approved transplant center for the procedure. Hospitals seeking Medicaid coverage for transplant procedures must submit documentation verifying that they are a Medicare approved center for each type of transplant other than bone marrow and stem cell transplants. A completed attestation form must be submitted to Provider Enrollment. The Medicaid Director may grant an exception to a transplant center for a specific procedure if the transplant surgeon can demonstrate experience with that specific procedure and a history of positive outcomes in another hospital that is a

Medicare approved transplant center for that specific procedure.

B. In addition to the above criteria, transplant centers located in-state shall meet the following criteria for Medicaid coverage of transplant services:

1. be a member of the Organ Procurement and Transplant Network (OPTN) or the National Marrow Donor Program (NMDP) if the hospital only performs bone marrow/stem cell transplants;

2. have an organ receiving and tissue typing facility (Centers for Medicare and Medicaid Services (CMS) approved for histocompatibility) or an agreement for such services;

3. maintain a written records tracking mechanism for all grafts and patients including:

a. patient and/or graft loss with the reason specified for failure;

b. date of the procedure;

c. source of the graft;

d. if an infectious agent is involved, the facility shall have a written policy for contacting patients and appropriate governmental officials;

4. have written criteria for acceptable donors for each type of organ for which transplants are performed;

5. have adequate ancillary departments and qualified staff necessary for pre-, intra-, and post-operative care including, but not limited to:

a. assessment team;

b. surgical suite;

c. intensive care;

d. radiology;

e. laboratory pathology;

f. infectious disease;

g. dialysis; and

h. therapy (rehabilitation);

6. have minimum designated transplant staff which includes:

a. transplant surgeon adopt standards as delineated and updated by the OPTN;

b. transplant physician same as above;

c. clinical transplant coordinator:

i. Registered Nurse licensed in Louisiana; and

ii. certified by NATCO or in training and certified within 18 months of hire date;

d. transplant social worker;

e. transplant dietician;

f. transplant data coordinator;

g. transplant financial coordinator;

NOTE: (For 6.a-g above, continuing education is required for continued licensure and certification as applicable.)

7. written patient selection criteria and an implementation plan for application of criteria;

8. facility plan, commitment and resources for a program capable of performing the following number of transplants per year/per organ a minimum of:

a. heart 12;

b. liver 12;

c. kidney 15;

d. pancreas 6;

e. bone marrow 10;

f. other organs as established per Medicare and/or OPTN.

NOTE: If the level falls below the required volume, the hospital shall be evaluated by the Department for continued recognition as a transplant center.

9. facility must demonstrate survival rates per organ type per year which meet or exceed the mean survival rates per organ type per year as published annually by the OPTN. (If rates fall below this level, the hospital shall supply adequate written documentation for evaluation and justification to the department.)

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

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

0411#065

## **DECLARATION OF EMERGENCY**

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

#### **Mental Health Rehabilitation Program Provider Enrollment Moratorium (LAC 50:XV.707)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby adopts LAC 50:XV.707 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule to revise provider participation requirements for the Mental Health Rehabilitation Program (MHR) by establishing enrollment and certification criteria for prospective providers (*Louisiana Register*, Volume 24, Number 7). Act 246 of the 2003 Regular Session of the Legislature authorized the department to promulgate rules and regulations requiring the mandatory accreditation of providers of mental health rehabilitation services by an accreditation body. In compliance with Act 246, the bureau promulgated a rule to amend the provisions contained in the July 20, 1998 Rule by establishing the accreditation requirements for mental health rehabilitation agencies (*Louisiana Register*, Volume 30, Number 4). The department promulgated an Emergency Rule that established a moratorium on the enrollment of new providers of mental health rehabilitation services in the Medicaid Program (*Louisiana Register*, Volume 30, Number 8). This Emergency Rule is being promulgated to continue provisions contained in the August 20, 2004 Rule. This action is being taken to promote the health and welfare of

Medicaid recipients by ensuring that only qualified providers who can meet the accreditation requirements may enroll to participate in the Medicaid Program.

Effective December 19, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.707 to implement a provider enrollment moratorium for mental health rehabilitation services.

## **Title 50**

### **PUBLIC HEALTH MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 1. Mental Health Rehabilitation**

###### **Chapter 7. Providers**

###### **Subchapter A. Eligibility and Certification**

###### **§707. Provider Enrollment Moratorium**

A. Effective August 20, 2004, a moratorium is implemented on the enrollment of mental health rehabilitation (MHR) providers to participate in the Medicaid Program. The department shall not approve for enrollment any new MHR provider or satellite office regardless of the status of their application.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

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

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

0411#062

## **DECLARATION OF EMERGENCY**

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

#### **Personal Care Services Long Term (LAC 50:XV.12901-12913)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.12901-12913 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 adopted a Rule to establish the provisions governing coverage of personal care services as an optional service under the Medicaid State Plan (*Louisiana Register*, Volume 29, Number 6). The bureau amended the June 20, 2003 Rule to clarify covered services, revise the recipient qualifications and define the term "legally responsible relative" (*Louisiana Register*, Volume 29, Number 10). The bureau promulgated an Emergency Rule

that amended the June 20, 2003 Rule and the October 1, 2003 Emergency Rule to establish provisions governing when a recipient may change personal care service providers and staffing requirements for personal care services agencies. In addition, the bureau amended the general provisions, standards for participation and the place of service requirements contained in the June 20, 2003 Rule (*Louisiana Register*, Volume 30, Number 4). This Emergency Rule is being promulgated to amend provisions contained in the April 20, 2004 Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring that services are performed by qualified personnel.

Effective December 18, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the June 20, 2003 Rule and April 20, 2004 Emergency Rule governing personal care services to establish provisions governing when a recipient may change personal care service providers and staffing requirements for personal care services agencies. In addition, the bureau proposes to amend the general provisions, standards for participation and the place of service requirements contained in the June 20, 2003 Rule.

#### **Title 50**

### **PUBLIC HEALTH MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 9. Personal Care Services**

#### **Chapter 129. Long Term**

##### **§12901. General Provisions**

A. ...

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 plan of care. 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. Authorization. Personal care services (PCS) shall be authorized by the Bureau of Health Services Financing or its designee. The bureau or its designee will review the completed assessment, supporting documentation from the recipient's primary physician, plan of care and any other pertinent documents to determine whether the recipient meets the medically necessity criteria for 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 29:911 (June 2003), amended LR 31:

##### **§12903. Covered Services**

A. Personal care services are defined as those services that provide assistance with the distinct tasks associated with the performance of 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:

A.1. - C. ...

D. Constant or intermittent supervision and/or sitter services are not a component of personal care services.

E. The performance of complex and non-complex medical procedures is not a component of personal care services. If the recipient's physician delegates the performance of medical procedures and the agency agrees to furnish these tasks, the agency must accept all liability for their employee's performance of medical tasks. The agency must have a current, signed and dated statement from the recipient's physician stating what medical procedures are being delegated.

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), amended LR 31:

##### **§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 disability criteria established by the Social Security Administration.

B. Personal care services for elderly or disabled recipients must meet medical necessity criteria as determined by the Bureau of Health Services Financing and must be prior authorized by the bureau or its designee. Personal care services are medically necessary if the recipient:

1. meets the medical standards for admission to a nursing facility, including all Preadmission Screening and Annual Resident Review (PASARR) requirements; and

2. is able, either independently or through a responsible representative, to participate in his/her care and direct the services provided by the personal care services worker. A responsible representative is defined as the person designated by the recipient to act on his/her behalf in the process of accessing and/or maintaining personal care services; and

3. 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. This criterion is considered met if:

a. the recipient is in a nursing facility and could be discharged if community-based services were available;

b. is likely to require nursing facility admission within the next 120 days; or

c. has a primary caregiver who has a disability or is over the age of 70.

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), amended LR 31:

##### **§12907. Recipient Rights**

A. - A.9. ....

B. Changing Providers. Recipients may request to change PCS providers without cause once after each three month service authorization period. Recipients may request to change PCS providers with good cause at any time during the service authorization period. Good cause is defined as the failure of the provider to furnish services in compliance

with the service plan. Good cause shall be determined by the bureau or its designee.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 31:

### **§12909. Standards for Participation**

A. - B.2. ...

3. ensure that a criminal background check is performed for all direct care and supervisory staff and that the results are maintained in each employee's personnel record;

a. the criminal background check must be performed by the Office of the State Police or an agency authorized by the Office of the State Police;

i. the agency may make an offer of temporary employment to an individual pending the results of the criminal background check. In such instances, the worker shall perform his/her duties under the direct supervision of a permanent employee or in the presence of a member of the recipient's immediate family or of a care giver designated by the immediate family;

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;

5. - 10. ...

11. have proof of general liability insurance of at least \$200,000. The certificate holder shall be the Department of Health and Hospitals; and

12. maintain an office in each DHH administrative region in which it proposes to provide services. The agency must obtain a separate license from the Department of Social Services and a separate Medicaid provider number for each region in which it provides services. Consideration shall be given to an agency's request to provide services in one parish that is adjacent to its designated service region if the agency's main office is within a 50-mile radius of the selected parish's borderline.

a. Each office must have hours of operation that conform to the customary operating hours for similar businesses in the local community and have written provisions for emergency contact that include a toll-free telephone line with 24-hour accessibility. The written policy governing emergency contact shall be made available to recipients and staff.

b. Each office must house the case records and billing documentation for the individuals served by that office.

c. Each office must also house the personnel and payroll records for all of the employees who are assigned to that office.

**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), amended LR 31:

### **§12911. Staffing Requirements**

A. Personal care services agencies participating in the Medicaid Program must ensure that all staff providing direct care to the recipient meets the qualifications for furnishing personal care services. The PCS worker shall demonstrate

empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job. In addition, all supervisors of direct care staff must meet the qualifications set forth in this §12911.

#### **B. Personal Care Services Worker Qualifications**

1. Age. The worker must be at least 18 years old or older at the time the offer of employment is made. Verification of age must be maintained in each employee's personnel record.

2. Education and Experience. All PCS workers must meet one of the following minimum education and experience qualifications:

a. a high school diploma or general equivalency diploma (GED); or

b. a trade school diploma in the area of human services; or

c. documented, verifiable experience providing direct care services to the elderly and/or persons with disabilities.

3. The PCS worker must have the ability to read and write in English as well as to carry out directions promptly and accurately.

C. Restrictions. A legally responsible relative is prohibited from being the paid PCS worker for a family member. Legally responsible relative is defined as the parent of a minor child, foster parent, curator, tutor, legal guardian or the recipient's spouse.

#### **D. Supervisor Qualifications**

1. Education and Experience. PCS supervisory staff must meet one of the following minimum education and experience qualifications. A PCS supervisor must:

a. have a bachelor's degree from an accredited college or university in one of the following human service-related fields:

i. social work;

ii. psychology;

iii. sociology;

iv. physical therapy;

v. occupational therapy;

vi. recreational therapy; or

vii. counseling; and

b. have two years of paid experience in a human service-related field providing direct services to the elderly and/or persons with disabilities; or

**NOTE:** Thirty hours of graduate level course credit in any of the referenced human service-related fields may be substituted for the one year of required paid experience.

c. be a licensed registered nurse (RN) or a licensed practical nurse (LPN) with one year of paid experience as a RN or LPN providing direct services to the elderly and/or persons with disabilities; or

d. have a high school diploma or GED and five years of paid experience providing direct care services to the elderly and/or persons with disabilities.

#### **E. Supervisory Responsibilities**

1. The supervisor shall be responsible for assessing PCS workers' job performance, reviewing client cases, providing constructive feedback, and assisting staff to resolve problems and to provide services in a more effective manner using the following methods:

a. routine (at least quarterly) face-to-face meetings with each PCS worker; and

b. periodic (at least quarterly) unannounced visits to the recipient's residence to monitor service delivery and compliance with the plan of care and service plan.

2. Each supervisor shall be responsible for the supervision of no more than 15 PCS workers.

F. Training. Training for PCS workers and supervisors must be provided or arranged for by the personal care services agency at its own expense.

1. A minimum of eight hours of orientation must be provided to new direct care and supervisory employees within one week of employment. The orientation provided to staff shall include, but is not limited to:

- a. agency policies and procedures;
- b. staff duties and responsibilities;
- c. ethics and confidentiality;
- d. record keeping;
- e. a description of the population served by the agency; and

f. a discussion of issues related to providing care for these individuals, including physical and emotional problems associated with aging and disability.

2. New direct care staff must also receive training in cardiopulmonary resuscitation (CPR) and basic first aid within one week of employment. A current, valid certification for CPR and first aid may be accepted as verification of training.

3. A minimum of 16 hours of training must be furnished to new employees within 30 days of employment. The PCS agency training curriculum must, at a minimum, include the following components:

- a. communication skills;
- b. observation, reporting and documentation of the recipient status and the care or service furnished;
- c. basic infection control procedures;
- d. basic elements of body functioning and changes in body function that must be reported to a worker's supervisor;
- e. safe transfer techniques and ambulation;
- f. appropriate and safe techniques in personal hygiene and grooming that include:
  - i. bed bath;
  - ii. sponge, tub, or shower bath;
  - iii. sink, tub, bed shampoo;
  - iv. nail and skin care;
  - v. oral hygiene; and
  - vi. toileting and elimination;
- g. recognizing emergencies and knowledge of emergency procedures;
- h. maintenance of a clean, safe and healthy environment; and
- i. treating the recipient with dignity and respect, including the need to respect his/her privacy and property.

4. PCS workers and supervisors must satisfactorily complete a minimum of 20 hours of annual training related to the provision of personal care services. This training may include updates on the subjects covered in orientation and initial training. The eight hours of orientation required for new employees are not included as part of the hours required for the annual training.

5. Documentation. All required training must be documented in the employee's personnel record, including the date, time spent in the training session, subjects covered

and the name of the individual who conducted the training. Verification of training shall be furnished to the bureau or its designee upon request.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### §12913. Place of Service

A. Personal care services may be provided in the recipient's home and in another location outside of the recipient's home if the provision of these services allows the recipient to participate in normal life activities pertaining to the IADLs cited in the plan of care. The recipient's home is defined as the place where he/she resides such as a house, an apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. The following institutional settings are not considered to be a recipient's home:

1. a hospital;
2. an institution for mental disease;
3. a nursing facility; or
4. an intermediate care facility for the mentally retarded.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended LR 31:

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

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

0411#064

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Commercial King Mackerel Closure

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department, by the Commission in its resolution of January 8, 2004, to close the 2004 commercial king mackerel season in Louisiana state waters when he is informed that the designated portion of the commercial king mackerel quota for the Gulf of Mexico has been filled, or was projected to be filled, the Secretary hereby declares:

Effective 12:00 noon, October 21, 2004, the commercial fishery for king mackerel in Louisiana waters will close and remain closed through June 30, 2005. Nothing herein shall



preclude the legal harvest of king mackerel by legally licensed recreational fishermen. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel within or without Louisiana waters. Effective with closure, no person shall possess king mackerel in excess of a daily bag limit within or without Louisiana waters. The prohibition on sale/purchase of king mackerel during the closure does not apply to king mackerel that were legally harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor provided appropriate records in accordance with R.S. 56:306.5 and 56:306.6 are properly maintained.

The secretary has been notified by National Marine Fisheries Service that the commercial king mackerel season in Federal waters of the Gulf of Mexico will close at 12:00 noon October 20, 2004. Closing the season in State waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

Dwight Landreneau  
Secretary

0411#014

#### **DECLARATION OF EMERGENCY**

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

###### **Hunting Season Closure**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries hereby adopts the following Emergency Rule.

Upon the authority of R.S. 56:6.1 and the authority granted to the Secretary by the Commission to close seasons, hunting in the following described portion of the state is hereby closed effective October 13, 2004 until further notice. This closure shall apply to that portion of Louisiana north and west of U.S. Highway 51 from U.S. 61 to Frenier Road, north of Frenier Road to Lake Pontchartrain, west of Lake Pontchartrain to Tangipahoa River, west bank of Tangipahoa River to La. Highway 22, south of La. Highway 22 to La. Highway 70 in Sorrento, east of La. Highway 70 to La. Highway 3125, north of La. Highway 3125 to La. Highway 641, north and west of La. Highway 641 to U.S. Highway 61, north of U.S. Highway 61 to U.S. Highway 51. The decision to close hunting was based upon the flooding that has continued in that area since Tropical Storm Matthew and the recent rainfall that has occurred since the storm. This season closure will remain in effect until the decision is made by the department secretary to reopen hunting.

Dwight Landreneau  
Secretary

0411#003

#### **DECLARATION OF EMERGENCY**

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

###### **Hunting Season Re-Opening**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act and under the authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries hereby rescinds the following hunting closure established by Emergency Rule.

Upon the authority of R.S. 56:6.1 and the authority granted to the Secretary by the Commission to reopen hunting seasons, hunting in the following described portion of the state is hereby reopened effective October 20, 2004. This order shall apply to that portion of Louisiana north and west of U.S. Highway 51 from U.S. 61 to Frenier Road, north of Frenier Road to Lake Pontchartrain, west of Lake Pontchartrain to Tangipahoa River, west bank of Tangipahoa River to La. Highway 22, south of La. Highway 22 to La. Highway 70 in Sorrento, east of La. Highway 70 to La. Highway 3125, north of La. Highway 3125 to La. Highway 641, north and west of La. Highway 641 to U.S. Highway 61, north of U.S. Highway 61 to U.S. Highway 51. The decision to reopen hunting was based upon flood waters receding and game species given time to disperse and resume their normal activities.

Dwight Landreneau  
Secretary

0411#013

#### **DECLARATION OF EMERGENCY**

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

###### **Iatt and Saline Lakes Reopen to Fishing**

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, and under authority of R.S. 56:317, the Secretary of the Department of Wildlife and Fisheries hereby declares:

Iatt Lake (Grant Parish) and Saline Lake (Winn/Natchitoches Parishes) will reopen to all legal fishing beginning Saturday, October 30, 2004.

The department had previously declared a Declaration of Emergency and closed all fishing on Iatt and Saline Lakes during the drawdowns. The purpose of the drawdowns was to control submerged aquatic vegetation. The lakes were closed to fishing to protect the fish that were concentrated in the remaining water. The spillway gates were closed October 25 and the drawdown officially ended. Due to recent rains and the gate closures, the water levels in the lakes will be sufficient by Saturday, October 30, 2004 to allow fishing again. The department is using emergency procedures in taking this action because the delays required for standard rulemaking would unnecessarily delay public access to this resource.

Dwight Landreneau  
Secretary

0411#015

# Rules

## RULE

### Department of Agriculture and Forestry Boll Weevil Eradication Commission

Boll Weevil Eradication (LAC 7:XV.314, 321 and 327)

In 1997 the Red River Eradication Zone was created for the purpose of establishing a boll weevil eradication program. Nineteen parishes were included in the Red River Eradication Zone. A majority of the cotton producers in the Red River Eradication Zone voted to impose an assessment on each acre of cotton to assist in paying for the eradication program. The assessment for the Red River Eradication Zone for the first 5-year period was set at \$10 per acre for 1997, \$35 per acre for 1998 and \$10 per acre for 1999-2001. At the end of the first five years the cotton producers voted to enter the Red River Maintenance Program. The maintenance program assessment for the 2002 and 2003 was set at \$10 per acre.

In 1999 the Louisiana Eradication Zone was created for the purpose of establishing a boll weevil eradication program in all parishes not included in the Red River Eradication Zone. A majority of the cotton producers in the Louisiana Eradication Zone voted to impose an assessment on each acre of cotton to assist in paying for the eradication program. The assessment for the Louisiana Eradication Zone for the first 5-year period was set at \$15 per acre for 1999-2003.

In September of 2003 the cotton producers in both eradication zones voted to continue the boll weevil eradication program. The cotton producers in both eradication zones also voted to continue the assessment at a maximum assessment of \$6 per acre since both eradication zones would be in similar, if not identical, boll weevil eradication maintenance programs as of 2004.

Because both the Red River Eradication Zone and the Louisiana Eradication Zone are now in similar, if not identical, maintenance programs and the assessment is uniform throughout the state there is no longer a need to maintain two separate zones or to provide for separate assessments in the rules and regulations. For these reasons these Rules and Regulations are being amended for the purpose of combining all parishes in Louisiana into one eradication zone and to establish a uniform assessment throughout the State of Louisiana in accordance with the September 2003 referendum approved by a majority of the cotton producers in the state and to provide for related matters.

These Rules are enabled by R.S. 3:1609. Rules 314, 321 and 327 are hereby amended and repromulgated to read as follows.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XV. Plant Protection and Quarantine

##### Chapter 3. Boll Weevil

##### **§314. Boll Weevil Eradication Zone: Creation**

A. One boll weevil eradication zone is hereby created within the state of Louisiana consisting of all the territory within the state of Louisiana.

B. This boll weevil eradication zone shall be known as the Louisiana Eradication Zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1609.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 23:195 (February 1997), amended LR 24:2231 (December 1998), LR 30:2443 (November 2004).

##### **§321. Assessments, Payment and Penalties**

A. The September 2003 referendum set the maximum annual assessment at \$6 per acre of cotton planted in the state. The annual assessment on cotton producers in the Louisiana Eradication Zone shall be \$6 per acre for each acre of cotton planted in the state. Each cotton producer shall pay his annual assessment to the ASCS office for the parish in which the cotton is planted by the later of July 1 or final certification of the growing season for the crop year in which he plants cotton.

B. A cotton producer may request a waiver of all or part of the assessment for any crop year in which he plants cotton in accordance with the following procedure. The granting of a waiver of all or part of any assessment for a crop year is within the discretion of the commission.

1. A cotton producer requesting a waiver of the assessment for a crop year must submit a written request for a waiver to the commission.

2. The commission must receive the written request, 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 actual receipt of the transmission.

3. 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.

4. 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. The commission shall not consider a written request that is not timely.

5. 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.

6. The commission has the authority to inspect any cotton field in which a cotton producer has claimed to have destroyed the cotton crop. Failure of the cotton producer to allow inspection shall be a violation of these regulations.

C. - H. ...

I. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1609, 1612, and 1613.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:20 (January 1995), amended LR 21:669 (July 1995), LR 23:195 (February 1997), LR 24:2231 (December 1998), LR 25:829 (May 1999) amended LR 29:859 (June 2003) amended LR 30:1142 (June 2004), LR 30:2443 (November 2004).

### §327. Program Participation

A. All cotton producers growing cotton in Louisiana are required to participate in the boll weevil eradication program in accordance with the Louisiana Boll Weevil Eradication Law and these regulations.

B. Cotton producers shall destroy cotton stalks in every field planted in cotton, on or before December 31 of each crop year. Cotton stalk destruction shall consist of shredding or disking in a manner that destroys standing cotton stalks. Cotton stalks that come up in a failed field must also be destroyed by December 31 of the crop year. Failure to destroy stalks by December 31 of each crop year shall be a violation of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1609, 1612, 1613.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 27:280 (March 2001), amended LR 30:2444 (November 2004).

Bob Odom  
Commissioner

0411#046

### RULE

#### Department of Civil Service Civil Service Commission

Election of Employee Member of  
State Civil Service Commission  
(LAC 40:XXVII.101)

Editor's Note: The following Section has been moved from Title 8 to Title 40 in accordance with the Office of the State Register's uniform system of codification.

In accordance with the provisions of R.S.42: 1357 (B), the Director of State Civil Service has amended §101 affecting the election of the employee member of the State Civil

Service Commission. The last election was held in 1999. The amendments were necessary to comply with revisions made to RS: 42.1351 through 1360 since the 1999 election and to prepare for the upcoming election, the call for which will be issued January 3, 2005.

### Title 40

### LABOR AND EMPLOYMENT

#### Part XXVII. Civil Service Commission

#### Chapter 1. Public Officials and Employees

#### §101. Election of Employee Member of the State Civil Service Commission

##### A. Qualifications: Term of Office

1. The classified employee member of the State Civil Service Commission shall be a full-time, permanent employee in the classified state service for a period of one year prior to the date on which he qualifies as a candidate and shall serve a term of six years unless serving to fill the unexpired term of a vacancy.

2. The classified employee eligible to fill an unexpired term will take office after notification of a vacancy by the Director of Civil Service to the Secretary of State and upon certification by the Secretary of State, who shall certify in accordance with law. That employee will serve until a new regular election is conducted to elect a successor.

##### B. Call for Election

1. The Director of State Civil Service shall post on the date it is issued the call for election on bulletin board(s) at the office of the Director of State Civil Service and on the web site maintained by the Department of State Civil Service. It shall remain posted until the final day for qualification as a candidate has passed. A copy of the call shall be delivered to the Secretary of State for publication in the official state journal.

##### C. Nominations

1. Candidates for election to the office of Classified Employee Member of the State Civil Service Commission must include on the nomination petition their name as it is to appear on the ballot, their position classification (job), the department, agency, board or commission at which employed, their home address, and their Social Security Number or any other personal identification number designated by the Director of Civil Service.

2. The nominating petition shall include the signature, printed name, Social Security Number or any other personal identification number designated by the Director of Civil Service, and the department, agency, board or commission of each employee signing the petition.

3. The Director of State Civil Service, or his designated representative, shall examine the nominating petition of each candidate on receipt, determine whether the person nominated is eligible or ineligible and that the petition is valid or invalid on its face, and so notify the candidate of his decision within 24 hours of the receipt of the petition by mailing such notification to the candidate's home address.

4. A candidate may withdraw his name from nomination by notifying the Director of State Civil Service in writing prior to the end of the qualifying period.

##### D. Conduct of Election

1. All eligible candidates shall have their names listed on the ballot in alphabetical order of their last name, exactly as it appears on the nominating petition.

2. Ballot envelopes will contain ballot instructions for voting, information about each candidate whose name appears on the ballot, and the final date for voting.

3. Instructions shall contain directions about the secrecy of the balloting process with reference to state law providing for punishment for violating that secrecy.

4. Ballot envelopes shall be mailed to every employee who is qualified to vote using the last mailing address reported by the appointing authority to the Department of Civil Service.

5. The Director of Civil Service shall supervise and be responsible for the election to ensure that it is conducted in accordance with the requirements of R.S. 42:1351 through 1360.

6. Voting may be conducted electronically or by mail. Electronic means shall be via telephone, via Internet or by any other acceptable electronic means.

7. The election process will include verification that each person casting a vote is qualified to vote and that no voter casts more than one vote.

8. The Director of Civil Service may contract with a vendor to conduct the election under the director's supervision.

#### E. Report of Results

1. The Director of Civil Service shall provide a written report of certified election results to the State Civil Service Commission and the Secretary of State.

2. A copy of the report shall be posted at the office of the Director of State Civil Service and on the Department of State Civil Service web site for five consecutive working days following submission of the report to the secretary of state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1357(B).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Civil Service Commission, LR 24:2077 (November 1998), amended LR 30:2444 (November 2004).

Allen H. Reynolds  
Director

0411#017

### RULE

#### Board of Elementary and Secondary Education

Bulletin 111 **C** Louisiana School,  
District, and State Accountability  
(LAC 28:LXXXIII.701, 703, 1503, 1705,  
3303, 3503, 4101, 4310, and 4317)

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

data in district accountability, establish a procedure to include newly reconfigured or reconstituted schools in accountability, address school performance scores when test scores are voided, and provide greater flexibility in evaluating the participation of students for subgroup considerations. These changes take advantage of new flexibility in guidance for No Child Left Behind and address situations that were not considered when the accountability policy was initially written.

### Title 28

### EDUCATION

#### Part LXXXIII. Bulletin 111 **C** The Louisiana School, District, and State Accountability System

#### Chapter 7. Subgroup Component

#### §701. Subgroup Component Indicators

A. - 1. ...

1.a. Participation rate test **C** 95 percent of the students within the subgroup participated in the standards-based assessments during the current year, during the current and previous year averaged, or during the current and previous two years averaged; and

1.b. - 6....

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2742 (December 2003), amended LR 30:2445 (November 2004).

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

A. - 2.b. ...

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

4. Beginning with the fall 2005 accountability results, former LEP students for up to two years after no longer being considered LEP under state rules.

a. These students will not count toward the minimum n for the LEP subgroup and will not be included in the SPS Growth Target adjustment.

B. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 30:2445 (November 2004).

#### Chapter 15. School Improvement (formerly called Corrective Actions

#### §1503. Entry into School Improvement

A. Schools shall enter school improvement by three methods of identification.

A.1. - C. ...

D. In the event that test scores are voided at a school due to testing irregularities, the accountability recalculations shall be performed. If applicable, the school shall be placed in the appropriate level of school improvement at the time of recalculation, and all associated remedies shall be applied.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2745 (December 2003), amended LR 30:2445 (November 2004).

**Chapter 17. Requirements for Schools in School Improvement (SI)**

**§1705. School Improvement 4 Requirements**

A. - F. ...

G. The LDE will review the changes to school sites due to reconstitution and will consult with the LEA on the effects that the reconstitution will have on rewards and/or school improvement status.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2747 (December 2003), amended LR 30:2446 (November 2004).

**Chapter 33. New Schools and/or Significantly Reconfigured Schools**

**§3303. Reconfigured Schools**

A. - B. ...

C. The LDE will review the changes to school sites in the reconfiguration and will consult with the LEA on the effects that the reconfiguration will have on rewards and/or school improvement status.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004).

**Chapter 35. Inclusion of Alternative Education Students**

**§3503. Option I**

A. The score for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's and district's accountability calculations for both the SPS and subgroup components. The alternative school itself shall receive a "diagnostic" SPS, not to be used for rewards or corrective actions, if a statistically valid number of students were enrolled in the school at the time of testing.

B. Students included in the GED/Skills Option program will be included in school accountability. They will be required to take the 9th grade Iowa Test or participate in LEAP Alternate Assessment (LAA) while enrolled. All programs will be considered Option I for alternative education purposes, and student attendance, dropout, and test score data will be sent back to the sending high schools and districts for accountability purposes.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004).

**Chapter 41. Data Collection and Data Verification**

**§4101. Valid Data Considerations**

A. ...

B. A test score shall be entered for all eligible students within a given school. For any eligible student who does not take the test, including those who are absent, a score of "0" on the CRT and NRT shall be calculated in the school's SPS. To assist a school in dealing with absent students, the Louisiana Department of Education shall provide an extended testing period for test administration. The only exceptions to this policy are students who were sick, whose family member(s) died, or who were in protective custody

during the test and re-testing periods and who have formal documentation for that period.

C. - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 30:2446 (November 2004).

**Chapter 43. District Accountability**

**§4310. Subgroup Component AYP**

A. - A.1.b.ii.

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

d. Beginning with the fall 2005 accountability results, former LEP students for up to two years after no longer being considered LEP under state rules.

e. These students will not count toward the minimum n for the LEP subgroup and will not be included in the SPS Growth Target adjustment.

2. - 5. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1447 (July 2004), amended LR 30:2446 (November 2004).

**§4317. District Accountability Data Corrections**

A. Since data used for district accountability results are derived from school-level data, district accountability data corrections should be handled during the school accountability appeals period, with the exception of summer school results. Data corrections concerning summer school results should be filed within 30 days after the release of summer school test data.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2446 (November 2004).

Weegie Peabody  
Executive Director

0411#004

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741 **C** Louisiana Handbook for School Administrators **C** Pre-GED/Skills Option 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 amended *Bulletin 741 C The 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 revision will afford students the opportunity to complete a full year of instruction by adjusting the age requirement. This action is a result of requests from local education agencies.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans  
Subchapter A. Bulletins and Regulations  
§901. School Approval Standards and Regulations**

**A. Bulletin 741**

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 28:269 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 30:2447 (November 2004).

\* \* \*

**Pre-GED/Skills Option Program**

**1.151.05** A school system shall implement the Pre-GED/Skills Option Program and shall obtain approval from the State Department of Education at least 60 days prior to the establishment of the program. (See High Stakes Testing Policy in Bulletin 1566.)

A program application describing the Pre-GED/Skills Option Program shall be submitted and shall address the following program requirements:

1. Students who shall be 16 years of age or older or who shall turn 16 years of age during the year they are to enroll into the program and meet one or more of the following criteria:
  - \*Shall have failed LEAP 21 English language arts and/or math 8th grade test for one or two years;
  - \*Shall have failed English language arts, math, science and/or social studies portion of the GEE;
  - \*Shall have participated in alternate assessment;
  - \*Shall have earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, or not more than 15 Carnegie units by age 19;
  - \*Students with Limited English Proficiency shall be considered eligible for the Pre-GED/Skills Option Program.
2. Enrollment is voluntary and requires parent/guardian consent.
3. Counseling is a required component of the program.
4. The program shall have both a Pre-GED/academic component and a skills/job training component. Traditional Carnegie credit course work may be offered but is not required. Districts are encouraged to work with local postsecondary institutions, youth-serving entities, and/or businesses in developing the skills component.
5. BESE will require the Pre-GED/Skills Option Program to be on a separate site. Exceptions will be considered based on space availability, transportation or a unique issue.
6. Students who complete only the skills section will be given a Certificate of skills completion.
7. Students will count in the October 1st MFP count.
8. Students will be included in School Accountability. While enrolled, they shall be required to take the 9th grade Iowa Test or alternate assessment. All programs will be considered Option 1 for alternative education purposes, and the score for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's SPS. (See Standard 20.002.00 of Bulletin 741.)

Refer to the Guidelines and Application Packet provided by the Louisiana Department of Education for the requirements to establish a Pre-GED/Skills Option Program.

\* \* \*

Weegie Peabody  
Executive Director

0411#005

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746 **Louisiana Standards for State Certification of School Personnel Louisiana Requirements PRAXIS/NTE Scores (LAC 28:I.903)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amends *Bulletin 746 Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. The revision changes Louisiana PRAXIS/NTE requirements for state certification in the secondary areas of agriculture, biology, general science, speech, and technology education, and in the all-level (K-12) area of art. PRAXIS exams will be available for the first time for certification in agriculture, speech, technology education, and art.

The state's new add-on policy governing addition of teaching endorsements to existing certificates allows for passing a PRAXIS exam in lieu of coursework. This policy opens new opportunities for those wishing to add agriculture, speech, technology education, and art.

**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**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 435, 541 (April, July, September, December 1975), LR 28:2505 (December 2002), LR 29:117 (February 2003), LR 29:119 (February 2003), LR 29:121 (February 2003), LR 30:2447 (November 2004).

\* \* \*

**Louisiana Requirements & Praxis/NTE Scores**

Certification Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning & Teaching			
			PLT K-6 (#0522)	PLT 5-9 (#0523)	or	PLT 7-12 (#0524)
Early Childhood PK-3	Elementary Content Knowledge (0014) Effective 6/1/04	147 150	<ul style="list-style-type: none"> <li>• Prior to 6/1/04: PLT K-6 or ECE 0020;</li> <li>• After 5/31/04: Early Childhood Education 0020 (Score 510)</li> </ul>			
Grades 1-5	Elementary Content Knowledge (0014) Effective 6/1/04	147 150	161	---		---
Grades 4-8 Generic	Middle School: Content Knowledge (0146) Not available for certification purposes effective 6/1/04. Middle Grades 4-8 candidates, effective 6/1/04, were required to pass one or more content specific middle grades exams.	150	---	154		---
Grades 4-8 Mathematics	Middle School Mathematics (0069)	148	---	154		---
Grades 4-8 Science*	Middle School Science (0439)	140	---	154		---
	Effective 6/1/2006	145				
	Effective 6/1/2009	150				
Grades 4-8 Social Studies*	Middle School Social Studies (0089)	149	---	154		---
Grades 4-8 English/Language Arts	Middle School English/Language Arts (0049)	TBD	---	154		---
<b>Grades 6-12 Certification Areas</b>						
Agriculture	Agriculture (0700) Effective 7/1/05	510	---	---		161
Biology	Biology & General Science (0030)	580	---	---		161
	Biology: Content Knowledge (0235) Effective 7/1/05	150				
Business	Business Education (0100)	540	---	---		161
	Effective 6/1/04*	570				
Chemistry	Chemistry/Physics/General Science (0070)	530				161
English	English Language, Literature, & Composition: Content Knowledge (0041)	160				
	Pedagogy (0043)	130	---	---		161
Family & Consumer Sciences (formerly Home Economics)	Family & Consumer Sciences (0120)	510	---	---		161
French	French (0170)	520	---	---		161
	French: Content Knowledge (0173) Effective 6/1/04	156				
General Science	Biology & General Science (0030) –OR–	580	---	---		161
	Chemistry/Physics/General Science (0070)	530				
	General Science: Content Knowledge (0435) Effective 7/1/05	156				
German	German (0180)	500	---	---		161
Mathematics	Mathematics (0060)	550	---	---		161
	Mathematics: Content Knowledge (0061)					
	Effective 6/1/04	125				
	Effective 6/1/07	130				
	Effective 6/1/10	135				
Physics	Chemistry/Physics/General Science (0070)	530				161
Social Studies	Social Studies: Content Knowledge (0081)	149	---	---		161
	Interpretation of Materials (0083)	152				
Spanish	Spanish (0190)	540	---	---		161
	Spanish: Content Knowledge (0191) Effective 6/1/04	160				
Speech	Speech Communications (0220)	575	---	---		161
	Effective 7/1/05					
Certification Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning & Teaching			
			PLT K-6 (#0522)	PLT 5-9 (#0523)	or	PLT 7-12 (#0524)
Technology Education (formerly Industrial Arts)	Technology Education (0050) Effective 7/1/05	600	---	---		161
Computer Science Earth Science Environmental Science Journalism Latin Marketing (formerly Distributive Education)	At this time, a content area exam is not required for certification in Louisiana.	---	---	---		161

**All-Level Areas**

Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning and Teaching			
			PLT K-6 (#0522)	PLT 5-9 (#0523)	or	PLT 7-12 (#0524)
Grades K-12 Art	Art: Content Knowledge (0133) Effective 7/1/05	155	161	154	or	161
Grades K-12 Dance	None Available***	---	161	154	or	161
Grades K-12 Foreign Languages	French (0170) French: Content Knowledge (0173) Effective 6/1/04	520 156	161	154		161
	German (0180)	500				
	Spanish (0190) Spanish: Content Knowledge (0191) Effective 6/1/04	540 160				
	Music Education (0110) Music: Content Knowledge (0113) Effective 6/1/04	530 151				
Grades K-12 Music	Music Education (0110) Music: Content Knowledge (0113) Effective 6/1/04	530 151	161	154	or	161
Grades K-12 Health and Physical Education	Physical Education (0090) Phys. Education: Content Knowledge (0091) Effective 6/1/04	550 146	161	154	or	161

\*\*\*At this time, a content area exam is not required for certification in Louisiana.

**Special Education Areas**

Area	Content Exam	Pedagogy Requirement
Special Education	Not required prior to 6/1/04, except for entry into new Mild/Moderate alternate certification programs	PLT K-6 (161), PLT 5-9 (154) OR PLT 7-12 (161)
<b>Effective 6/1/04</b>		
Early Interventionist	None required at this time; under consideration for future	Education of Exceptional Students: Core Content Knowledge (0353) 143
Hearing Impaired	None required at this time; under consideration for future	Education of Exceptional Students: Core Content Knowledge (0353) 143 Education of Deaf and Hard of Hearing Students (0271) 160
Mild to Moderate Disabilities	Candidate would take content area exam appropriate to certification level CPK-3, 1-5, 4-8, 6-12 (see previous page)	Education of Exceptional Students: Core Content Knowledge (0353) 143 Education of Exceptional Students: Mild to Moderate Disabilities (0542) 141
Severe to Profound Disabilities	None required at this time; under consideration for future	Education of Exceptional Students: Core Content Knowledge (0353) 143 Education of Exceptional Students: Severe to Profound Disabilities (0544) 147
Visual Impairments/Blind	None required at this time	Education of Exceptional Students: Core Content Knowledge (0353) 143

**PRE-PROFESSIONAL SKILLS TESTS**

(Required for all Louisiana candidates to enter teacher preparation programs.)

Pre-Professional Skills Test	Test #	Score	Pre-Professional Skills Test	Test #	Score
PPST:RC Pre-Professional Skills Test: Reading	0710	172	Computer-Based Tests (prior to 1/16/02): CBT Reading CBT Writing CBT Mathematics	0711 0721 0731	319 316 315
PPST:WC Pre-Professional Skills Test: Writing	0720	171			
PPST:MC Pre-Professional Skills Test: Mathematics	0730	170			
Computerized PPST (1/16/02 and after) Same passing scores as written PPST:					
Reading	5710	172			
Writing	5720	171			
Mathematics	5730	170			

**OTHER AREAS**

Certification Area	Name of Praxis Test	Area Test Score
Administration	Educational Leadership: Administration & Supervision (0410)	620

All Praxis scores used for certification must be sent directly from ETS to the State Department of Education electronically, or the original Praxis score report from ETS must be submitted with candidate's application.

Weegie Peabody  
Executive Director

0411#006



**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746 Louisiana Standards for State Certification of School Personnel  
 Revision to the Highly Qualified HOUSSE Definition to Allow Credit for Experience Earned by "Not New" Teachers (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amends *Bulletin 746 Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This change in current Bulletin 746 policy amends the Highly Qualified definition for "not new" (experienced) teachers pertaining to Louisiana's High Objective Uniform State Standard of Evaluation (HOUSSE) option. The nature of the change is to allow credit for a teacher's previous work experience as a fully certified teacher, with experience credited as continuing learning units (CLUs) at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience.

Relative to High Objective Uniform State Standard of Evaluation (HOUSSE) option in Louisiana's Highly Qualified definition for "not new" (experienced) teachers, this action recognizes a teacher's content expertise gained through years of practice by allowing credit in the form of continuing learning units (CLUs) for successful work experience as a fully certified teacher.

**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**

\* \* \*

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, 541 (April, July, September, December 1975), LR 28:2505 (December 2002), LR 29:117 (February 2003), LR 29:119 (February 2003), LR 29:121 (February 2003), LR 30:2450 (November 2004).

\* \* \*

**Highly Qualified Teacher in Louisiana**

<b>"Not New" Elementary Teacher</b>	
1	Holds elementary school education certificate, a special education certificate that includes elementary school grades, or a special foreign language certificate to teach a specific foreign language in grades K-8; and
2	Does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
3	Has passed the Louisiana content-specific elementary education licensing exam; or

4	Holds a valid National Board for Professional Teaching Standards (NBPTS) certification in early childhood, middle childhood, or in a content area basic to the elementary school (e.g., Early Language Arts, Early Mathematics) and is teaching in the NBPTS area of certification; or
5	Has at least 12 semester hours of credit in each of the four core disciplines (English/language arts, including reading and writing; math; science; and social studies); or
<b>Qualifies Under High Objective Uniform State Standard of Evaluation (HOUSSE) for "Not New Elementary Teachers" (By School Year 2005-2006)</b>	
A "not new" teacher who does not meet the requirements of the paragraphs number 3, 4, or 5 above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes ninety (90) Continuing Learning Units (CLUs) by the end of 2005-2006. A "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three (3) CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience.	
*A Continuing Learning Unit (CLU) is a professional development activity that builds capacity for effective, research-based, content focused teaching and learning that positively impacts student achievement. The Louisiana Professional Development Guidance will be used to define the 90 continuing learning units.	

**Highly Qualified Teacher in Louisiana**

<b>"Not New" Middle School Teachers</b>		<b>"Not New" Secondary School Teachers</b>
1	Holds a valid teaching certificate appropriate for grades 6-8 (e.g., Elementary Education 1-8, Upper Elementary Education 5-8, Middle School Education); a special education area that includes middle school grades; a secondary academic content area; or special foreign language certificate to teach a specific foreign language in grades K-8; and	Holds certificates for every core academic subject the individual teaches; and
2	Does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis; and	Does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
3	a) Has passed Louisiana subject-specific licensing exam required for a middle school academic content area or for a secondary (grades 7-12) academic content area that is appropriate to the middle school level, for every core academic subject the individual teaches; OR b) Has the equivalent of an academic major in a content area appropriate to the middle school level, for every core academic subject the individual teaches; OR c) Has earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches; OR d) Holds a valid National Board for Professional Teaching Standards (NBPTS) certification in a core content area and is teaching in the NBPTS area of certification; or	a) Has passed the Louisiana subject-specific licensing exam required for a secondary (grades 7-12) academic content area, for every core academic subject the individual teaches; or b) Has the equivalent of an academic major in a secondary content area, for every core academic subject the individual teaches; OR c) Has earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches; OR d) Holds a valid National Board for Professional Teaching Standards (NBPTS) certification in a core content area and is teaching in the NBPTS area of certification; or

**Qualifies Under**

High Objective Uniform State Standard of Evaluation (HOUSSE)  
for "Not New" Middle School and Secondary Teachers  
(By School Year 2005-2006)

A "not new" teacher who does not meet the requirements of the paragraphs 3(a), 3(b), 3(c), or 3(d) above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes ninety (90) Continuing Learning Units (CLUs) by the end of 2005-2006. A "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three (3) CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience.

\*A Continuing Learning Unit (CLU) is a professional development activity that builds capacity for effective, research-based, content focused teaching and learning that positively impacts student achievement. The Louisiana Professional Development Guidance will be used to define the 90 continuing learning units.

\* \* \*

Weegie Peabody  
Executive Director

0411#007

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746 **L**ouisiana Standards for State Certification of School Personnel **S**uspension and Revocation of Certificates Due to Fraudulent Documentation Pertaining to Certification (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amends *Bulletin 746 Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. Currently, the teacher certification suspension and revocation policy addresses consequences due to criminal offenses. This new Bulletin 746 policy specifies conditions for suspension and revocation of a teaching certificate due to one's submission of fraudulent documentation pertaining to certification. The policy also specifies conditions under which an appeal can occur.

**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

\* \* \*

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 (April 1975), amended LR 1:311 (July 1975), LR 1:399 (September 1975), LR 1:541 (December 1975), LR 28:2505 (December 2002), LR 29:117 (February 2003), LR 29:119 (February 2003), LR 29:121 (February 2003), LR 30:2451 (November 2004).

\* \* \*

**Suspension and Revocation of Certificates Due to Fraudulent Documentation Pertaining to Certification**

A Louisiana teaching certificate may be suspended and revoked if a teacher presents fraudulent documentation pertaining to his/her certificate to the State Board of Elementary and Secondary Education or the Department of Education.

Upon determining that a teacher has submitted fraudulent documentation pertaining to his/her teaching certificate, the department shall investigate the matter. Upon confirmation of the information investigated, the department shall notify the teacher by certified mail that his/her certificate has been suspended pending official board action and that a hearing will be conducted by the board to consider revocation.

Such hearing will be limited to the issue of whether or not the document submitted was fraudulent. The teacher shall provide the board with documentation that will refute the fraudulent nature of the document.

The Due Process Committee shall make a recommendation to the full board, based on documentation received from the department and the teacher, whether the teaching certificate should be revoked. The decision of the board shall be transmitted to the local school board and to the teacher affected.

A teacher whose certificate has been revoked under the provisions of this Part may apply for reinstatement three years or later after the effective date of the revocation of his/her certificate or three years after the conviction of any felony resulting from the submission of fraudulent documentation, whichever is later. The Due Process Committee of the board may conduct a hearing to determine if all requirements for certification have been successfully completed and whether the person has rehabilitated himself/herself sufficiently to warrant reinstatement of the teaching certificate.

\* \* \*

Weegie Peabody  
Executive Director

0411#008

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 996 **L**ouisiana Standards for Approval of Teacher Education Programs (LAC 28:XLV.Chapters 1-13)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 996 Louisiana Standards for Approval of Teacher Education Programs* (LAC 28, Part XLV). Revisions to Bulletin 996 are (1) addition of preliminary or second-stage approval for new or reinstated public and private teacher preparation units; (2) change of five-year cycle to seven-year cycle for institutions that have successfully completed at least two National Council for Accreditation of Teacher Education (NCATE) evaluation cycles; and (3) technical changes to the bulletin to update its information. The first change allows a new unit to begin the

process of developing teacher education certification programs; to admit students to the new programs; to begin assembling needed documentation for full unit accreditation, per state and NCATE standards; and, after the board has granted second-stage approval to the unit, to recommend students in such programs for certification. The second change approves the NCATE plan to extend the accreditation cycle from five years to seven years for institutions seeking continued accreditation. Institutions seeking first-time accreditation would remain on a five-year cycle before moving to a seven-year cycle after the second evaluation visit.

This addition to Bulletin 996 addresses the need to provide a procedure for a new or reinstated unit to gain state approval in order to admit candidates, recommend them for state certification, and begin the NCATE accreditation process.

The state is in a Partnership Agreement with NCATE for the accreditation for Louisiana Institutions of Higher Education (IHEs). This change brings the state bulletin into full agreement with the NCATE plan to extend the accreditation cycle to seven years for proven IHEs.

Technical changes will update the language of the bulletin to a current status.

## **Title 28 EDUCATION**

### **Part XLV. Bulletin 996 Louisiana Standards for Approval of Teacher Education Programs**

#### **Chapter 1. Introduction**

##### **§101. Guidelines**

A. Bulletin 996 is intended to guide higher education institutions in the development and review of new programs and existing teacher education programs, to guide visiting committees in their evaluations, and to inform all interested persons of the Louisiana standards for teacher preparation programs and the procedures for program evaluation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:1730 (August 2002), amended LR 30:2453 (November 2004).

##### **§102. Preliminary Approval or Second-Stage Approval for New or Reinstated Public and Private Teacher Preparation Units**

A. Preliminary Approval or Second-Stage Approval for New or Reinstated Public and Private Teacher Preparation Units guides private institutions seeking to develop or reinstate a teacher preparation program, and identifies certification procedures for new and reinstated public and private teacher preparation programs.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 30:2452 (November 2004).

##### **§103. The Partnership Agreement**

A. In September 1999, the State Board of Elementary and Secondary Education (SBESE) authorized Cecil J. Picard, State Superintendent of Education, to sign the partnership agreement between the state and the National Council for Accreditation of Teacher Education (NCATE). Implementation began in 2000 with visits to Louisiana institutions of higher education. 2004, The NCATE/State

Partnership Agreement formalizes current practice and provides the state greater input into the review process. The State Board of Elementary and Secondary Education and the State Department of Education are committed to ensuring that the teachers in Louisiana meet high standards.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:1730 (August 2002), amended LR 30:2452 (November 2004).

##### **§105. Protocol**

A. Bulletin 996 contains three parts that are vital to the Teacher Preparation Program Approval Process. Part One includes the Protocol and the Protocol Addendum for First/Probation/Continuing Accreditation for Professional Education Units in the State of Louisiana.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002), amended LR 30:2452 (November 2004).

##### **§107. NCATE 2000 Standards May 11, 2000**

A. The National Council for Accreditation of Teacher Education standards (NCATE 2000 Standards: May 11, 2000). The standards selected for state program approvals are identical to the standards prescribed by the National Council for the Accreditation of Teacher Education (NCATE 2000 Standards: May 11, 2000). These standards focus on the overall quality of the professional education unit, with emphases on policies, procedures, candidates, assessment, field experiences, clinical practice, governance, administration, staffing, and resources.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002), amended LR 30:2452 (November 2004).

##### **§109. State Supplement**

A. Bulletin 996 contains the Louisiana State Supplement Standards for Teacher Preparation Program Approval, standards that are unique to Louisiana education initiatives. Although particular sections of this bulletin are addressed specifically to the institution or to the visiting committee, it is important for the visiting committee to be familiar with the directions given to the institution, and vice versa. Study and observance of Bulletin 996 by all concerned will greatly facilitate the state program approval and national unit accreditation processes.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002), amended LR 30:2452 (November 2004).

#### **Chapter 2. Preliminary Approval or Second-Stage Approval for New or Reinstated Public and Private Teacher Preparation Units**

##### **§201. Preliminary Approval and Second Stage Approval**

A. The Louisiana Department of Education staff reviews applications for preliminary approval and for second-stage approval of public and private, new or reinstated teacher education units. When an application is judged satisfactory, a recommendation is made to the State Board of Elementary

and Secondary Education (SBESE) for preliminary approval or for second-stage approval.

B. The state may conduct scheduled and/or unscheduled reviews of the teacher education unit, including on-site visits, during the preliminary approval or second-stage approval phase.

C. Public institutions seeking preliminary approval or second-stage approval must submit duplicate documents to the Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2452 (November 2004).

### **§203. Application for Preliminary Approval**

A. Preliminary approval authorizes the institution to proceed with developing the teacher education unit and programs identified in the request, and to admit candidates to programs under conditions specified in Paragraph 8 below. Preliminary approval does not authorize the recommendation of graduates for certification.

B. The board will grant preliminary approval for a period of one year. At the end of that year, if requested by the institution, the board may grant a one-year extension of preliminary approval. The application for preliminary approval must include the following items:

1. official declaration of intent, with request for approval, in the form of a letter from the head of the institution and or the head of the teacher education unit;

2. evidence of regional accreditation status (e.g. Southern Association of Colleges and Schools);

3. documentation describing general education classes (e.g., number of general education course hours by discipline and catalog course descriptions);

4. documentation describing certification areas to be offered, with required courses to meet state certification requirements, including a core of professional education classes;

5. evidence of collaboration with school districts, including a plan for development of an advisory board of community representatives (PK-16+ Council). The written plan should describe how the council would be used and should name members and/or potential members;

6. evidence to show that the institution's governing structure will accept, respect, include, and support a teacher preparation unit and programs (letter from head of the institution, with budget detail showing funding sources);

7. documentation showing expertise of individuals directed to guide the unit and its programs (vita of the dean or chair, department heads, director of field experiences, faculty, etc.);

8. an articulation agreement to transfer credit hours with another, approved teacher preparation institution that agrees to recommend the new/reinstated institution's candidates for certification, as needed, for continuous progress and program completion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2453 (November 2004).

### **§205. Application for Second-Stage Approval**

A. Second-stage approval authorizes the institution to recommend candidates for certification, under limits stipulated in the conditions, for a period of one to three years.

B. Before the termination of second-stage approval, the unit shall present evidence that it has met pre-conditions for full state approval and/or national accreditation or shall request that second-stage approval be extended. The State Board of Elementary and Secondary Education (SBESE) may grant only one such extension, for a period of one year, when problems are identified that require solution prior to application for full state approval and/or national accreditation. The application for second-stage approval must include the following items:

1. a narrative describing the institutional and teacher education unit mission, reflecting the teacher education unit as an integrated and integral part of the university, and reflecting a common mission of all colleges (e.g., College of Education, College of Arts/Sciences, etc.) within the institution responsible for the preparation of teachers. The narrative should specify beliefs that drive the institution and unit and may include the knowledge bases from which these beliefs developed;

2. a written description of the professional education unit that is primarily responsible for the preparation of teachers and other professional educational personnel. This may be a chart or a narrative that specifies all professional education programs offered by the institution and degrees awarded for each program, and an organizational chart showing the unit's relationship to other administrative units within the institution;

3. evidence that a dean, director, or chair is officially designated to represent the unit and has been assigned authority and responsibility for its overall administration and operation (e.g., a job description for the head of the professional education unit);

4. evidence of written policies and procedures that guide unit operation, including policies or procedures pertaining to candidates. This may be submitted as hard copy (e.g., catalogs, handbooks) or as instructions for accessing a website;

5. response to Louisiana Specific Standards/Rules/Guidelines, including Title 17 of the Louisiana Revised Statutes, Sections 7.1, 7.2, to ensure that the unit is meeting state law, that courses reflect content standards, that field experiences are included, that admissions requirements are met, etc.;

6. a description of the unit's system of monitoring and evaluating its candidates, programs, operations, and the performance of its graduates. This will reflect how the unit will assess programs, unit effectiveness, and candidates as well as how the unit will provide follow-up data on its graduates;

7. instrument(s) for assessing candidates for admission to and exit from the teacher preparation program. This would include requirements for entrance to teacher education programs, through transition points, and for successful program completion as well as procedures for remediation, if necessary;

8. full budget report for the implementation of programs, including internal and external sources of funding, and including both hard and soft monies;

9. evidence of submission for state approval of all certification programs offered at the institution. By progressing through the full program approval process, programs will become sanctioned by the Louisiana Department of Education and the Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2453 (November 2004).

**§207. Application by the Unit for Full State Approval and/or for Accreditation by NCATE (National Council for the Accreditation of Teacher Education)**

A. The institution's teacher education unit must meet both NCATE and state standards in order to secure state approval and/or NCATE accreditation. At the time it completes the second-stage approval phase of the approval process, the institution must meet requirements to satisfy NCATE pre-conditions.

B. An institution seeking full NCATE accreditation must submit an "Intent to Seek NCATE Accreditation" form to NCATE. An institution pursuing state approval only must respond to each of the NCATE pre-conditions and submit to Division Director, Teacher Certification and Higher Education, Louisiana Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2454 (November 2004).

**Chapter 3. Protocol State Requirements**

**§301. Adoption of NCATE Standards by Reference**

A. The state has adopted the standards prescribed by the National Council for the Accreditation of Teacher Education (NCATE 2000 Standards: May 11, 2000). These standards are available on the NCATE website ([www.ncate.org](http://www.ncate.org)) and from the National Council for the Accreditation of Teacher Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002), amended LR 30:2454 (November 2004).

**§303. First/Continuing/Probation Accreditation for State Program Approval for Professional Education Units in the State of Louisiana**

A. Dates of Visit

1. First/Continuing

a. Institutions receive copies of the regulations governing the approval of teacher preparation programs. The regulations require the institution to notify the department of intent to seek approval not less than one year prior to the year in which current state approval will end.

b. Institutions accredited for the first time will remain on the five-year cycle before moving to the seven-year cycle after the second fully-accredited visit.

c. Visits are scheduled from Saturday through Wednesday noon. The Louisiana Department of Education must agree upon the date of the visit.

B. Timelines

1. First/Continuing

a. In Accordance to NCATE Timelines

b. All teacher preparation programs have received the current approval regulations and certification regulations.

C. Preconditions

1. First

a. For state-only visits, Preconditions #1-10 are sent to the LSDE approximately 18 months prior to the on-site visit.

2. First/Continuing/Probation

a. For state approval Preconditions #11 and #12 must be met.

D. Program Review Documents (Program review documents required)

1. First/Probation

a. Two copies of each program review must be submitted to the LSDE at the same time they are submitted to NCATE. For a state-only visit, two copies should be submitted to LSDE.

b. The state coordinates program reviews by national professional education associations with guidelines that have been approved by the Specialty Area Studies Board.

c. A copy of the national review also must be sent to the LSDE. The information will be made available to the Louisiana State Board of Elementary and Secondary Education for review, if requested.

2. Continuing

a. Two copies of each program review and one copy of the national review should be sent to the LSDE. This information will be made available to the Louisiana State Board of Elementary and Secondary Education for review, if requested.

E. Standards

1. First/Continuing/Probation

a. NCATE standards and the Louisiana State Supplement Standards apply to the professional education unit, as per Louisiana State Board of Elementary and Secondary Education.

F. Institutional Report

3. First/Probation

a. The institution responds to NCATE/state standards. For state only visits, a copy of the institutional report, undergraduate and graduate catalog are sent to each member of the state team and to the state consultant.

b. The institutional report must address, in addition to NCATE requirements, the specific Louisiana requirements.

4. Continuing

a. The institution must send one copy of the institutional report to each member of the state team and to the state consultant. The institutional report must address NCATE requirements (if applicable) and the specific Louisiana requirements.

G. Previsit

1. First/Continuing/Probation

a. The state chair meets with LSDE consultants and the institution's unit head and/or designee to plan for the visit. This previsit occurs at the institution within 60 days of the visit.

b. The state chair and state consultant should have received a copy of the institution's report(s) prior to the previsit.

H. Team Members (Joint)

1. First/Continuing/Probation

a. A team is selected from Louisiana's Board of Examiners (BOE) by the coordinator of teacher preparation program approval and the Section Administrator of Teacher Certification and Higher Education. Louisiana regulations require that team members represent a broad background and experience in education. The team must include representatives of Louisiana Education Authorities (LEAs), higher education, and the LSDE and must represent geographic, gender and racial diversity. The institution is given the opportunity to request the withdrawal of any team member for good cause. The LSDE approves or denies the request.

I. Team Size

1. First/Continuing/Probation

a. The total number of team members will be determined jointly by NCATE, (if applicable) and/or by the LSDE, based on the number of programs to be reviewed. All Louisiana members will be voting members of the team. The state consultant will not vote but will have full rights otherwise.

J. Team Chairs

1. First/Continuing/Probation

a. The coordinator for teacher preparation program approval and the section administrator of certification and higher education appoints the state co-chair. The state co-chair will be responsible for coordinating the writing of findings addressing Louisiana standards, based on information provided by Louisiana team members.

K. Team Decisions

1. First/Continuing/Probation

a. For NCATE/State visits, the Louisiana team members will determine if the specific Louisiana standards have been met and will determine the weaknesses to be cited and recorded for each standard. The team generally uses a consensus process.

b. For state-only visits, the Louisiana team members will vote on both NCATE and state standards to determine if the unit has met standards and if not, the weaknesses to be cited.

L. Team Expenses

1. First /Continuing/Probation

a. The institution is required to cover all travel and maintenance expenses for the members of the Louisiana BOE.

M. Team Training

1. First/Continuing/Probation

a. Louisiana members have successfully completed an LBOE training session in the past six years.

N. Other Team Participants

1. First/Continuing/Probation

a. The state consultant's expenses are covered by the LSDE.

O. On-Site Visit

1. First/Continuing/Probation

a. The NCATE template for on-site visits guides the conduct of the visit as outlined in the *Handbook for First*

*Accreditation Visits* and the *Handbook for Continuing Accreditation Visits*.

b. The state format for an exit interview includes providing information on the rating of the standards with weaknesses cited.

c. For a state-only visit, an exit conference is held before the team departs on Wednesday. The state chair and the state consultant from the LSDE conduct it. The unit head, unit visit coordinator and the president and/or provost may also attend.

P. BOE Team Report

1. First/Continuing/Probation

a. For NCATE/state visits, the state co-chair will compile the state section of the report. A draft of the state report will be mailed to each state member and the state consultant for review and to the institution for its review of any factual errors.

b. For state-only visits, the state chair will compile the entire report. A draft of the team report will be mailed to each team member and the state consultant for review and to the institution for its review of any factual errors. The unit has approximately five days to respond in writing.

c. After receiving the unit's response and making appropriate changes, if necessary, the chair submits the final report, including state standards if joint visit, to LSDE, which then sends two copies of the report to the institution and NCATE (if applicable).

Q. Institutional Rejoinder

1. First/Continuing/Probation

a. The institution must submit two copies of its BOE report rejoinder, addressing all applicable standards, to the LSDE. The institution may, as appropriate, send a written state report rejoinder to the LSDE.

R. Final Action Report

1. First/Continuing/Probation

a. The LSBESE reviews the institutional report and any institutional rejoinders and/or responses. The LSBESE makes the final decision on the approval of the teacher preparation programs (unit) at that institution. The Louisiana Unit Accreditation Board (LUAB) meets to recommend the action to be taken, based on the report and the rejoinder, and LSDE staff takes the action recommendation to LSBESE. The actions that the board can take include full approval, provisional approval, probationary approval, or denial of approval for the unit. A letter from the State Board of Elementary and Secondary Education to the head of the education unit conveys final board action, with a copy to the president of the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002), amended LR 30:2454 (November 2004).

**§305. Protocol Addendum for Change in State Status of NCATE Accredited Teacher Education Units in Louisiana**

A. As a result of action taken by the NCATE Executive Board in October of 1999, an addendum has been included with the State of Louisiana's Partnership Protocol, to reflect actions to be taken by NCATE and the state when a "change in state status" occurs for an NCATE accredited teacher education unit.

1. Notification

a. The state will provide to NCATE a copy of the teacher education standards that describe how status of programs will be determined.

b. Within 30 days, the state will provide NCATE notification of a "change in state status" affecting a Louisiana NCATE-accredited institution.

c. Supporting documentation, pertaining to the decision that leads to a "change in state status," will be provided to NCATE, pending approval by the State Board of Elementary and Secondary Education.

d. As with all institutional actions by the Louisiana State Board of Elementary and Secondary Education, public notice will be given.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002), amended LR 30:2455 (November 2004).

**Chapter 5. Preconditions for Teacher Preparation Program Approval**

**§501. Requirements of Preconditions**

A. The preconditions for teacher preparation program approval are required to assure that any education unit undergoing review has met fundamental criteria that undergird the state's and NCATE's standards for accreditation. An education unit should submit its preconditions report to the Louisiana Department of Education and to NCATE office, if simultaneously pursuing national accreditation, within 18 months of its planned program approval visit. State department personnel and, in the case of national approval, NCATE staff will advise the unit if any additional documentation is required to complete the preliminary process for program approval. Once the preconditions process is complete with notification from the Louisiana Department of Education and/or NCATE, the institution should begin its preparation toward state and/or national accreditation of its teacher preparation program.

B. The state entered into a partnership agreement with the National Council for Accreditation of Teacher Education (NCATE) to conduct joint state program approval and NCATE unit accreditation reviews. The state has adopted and is incorporating by reference Preconditions 1-9 prescribed by NCATE. These standards are available from the NCATE website (www.ncate.org) or from the National Council for Accreditation of Teacher Education.

C. Preconditions #10, #11, and #12 must be met by education units seeking approval.

1. Precondition #10. The institution is an equal opportunity employer and does not discriminate on the basis of race, sex, color, religion, age or handicap (consistent with Section 702 of Title VII of the Civil Rights Act of 1964, which deals with exemptions for religious corporations, with respect to employment of individuals with specific religious convictions).

a. Documentation required:

i. a copy of the institution's official action pledging compliance with nondiscriminatory laws and practice.

2. Precondition #11. Under state legislative authority R.S. 17:7(6), as amended, the unit complies with the qualifications and requirements for the certification of

teachers established by the State Board of Elementary and Secondary Education.

a. Documentation required:

i. teacher education handbooks (faculty and student) or university catalog that publishes the unit's policies and procedures regarding but not limited to the following:

(a). procedures for student evaluation and counseling upon first entry into the institution;

(b). 2.20 average on a 4.00 scale as a condition for entrance into a teacher education program;

(c). passage of standardized test for entry into teacher education;

(d). experiences in schools of varied socioeconomic and cultural characteristics;

(e). instruction on child discipline and the prevention of disruptive behavior in schools;

(f). reading courses (three hours for secondary , six hours for middle grades, and nine hours for elementary);

(g). a minimum of 270 clock hours in student teaching with 180 hours of actual teaching;

(h). a substantial part of 180 hours of actual student teaching on an all day basis;

(i). 2.50 cumulative grade point average at graduation; and

(j). evaluation criteria of faculty and timeframes.

3. Precondition #12. The teacher education unit must meet the BESE requirements for certification for each program area offered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002), amended LR 30:2456 (November 2004).

**Chapter 7. NCATE 2000 Unit Standards §701. Partnership Agreement**

A. The state entered into a partnership agreement with the National Council for Accreditation of Teacher Education (NCATE) effective through Fall 2004 to conduct joint state program approval and NCATE unit accreditation reviews. The state has adopted and is incorporating by reference the standards prescribed by NCATE. These standards are available from the NCATE website (www.ncate.org) or from the National Council for Accreditation of Teacher Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002), amended LR 30:2456 (November 2004).

**Chapter 9. Louisiana State Supplement for Teacher Preparation Program Approval**

**§901. Introduction**

A. Each teacher preparation program seeking approval from the Louisiana State Board of Elementary and Secondary Education (LSBESE) is required to incorporate and adhere to the NCATE standards and to track closely the NCATE accreditation process. Each Louisiana university is required to develop a report describing how the unit is addressing the key state initiatives as identified and delimited in the Louisiana State Supplement for Teacher Preparation Program Approval. It is the responsibility of the teacher preparation program to prepare and present a clear

description of how it is responding to each of the Louisiana Standards.

B. The rubrics, as listed, develop a continuum of quality regarding a beginning teacher's ability to meet effectively the requirements of the five domains in *The Louisiana Components of Effective Teaching*. The integration of the Louisiana Content Standards is to be evidenced in the teacher education curricula of each teacher education unit. Each teacher education program must show evidence of integration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002), amended LR 30:2456 (November 2004).

## Chapter 11. The Components of Effective Teacher Preparation

### Subchapter A. Standard A Candidates Provide Effective Teaching for All Students

#### §1101. Planning

A. Candidates at both the initial and advanced levels of the Teacher Education Program Provide Effective Instruction and Assessment for All Students

1. The teacher education program provides candidates<sup>1</sup> at both the initial and advanced levels with knowledge and skills in the following planning processes: specifying learner outcomes, developing appropriate activities which lead to the outcomes, planning for individual differences, identifying materials and media for instruction, specifying evaluation strategies for student achievement, and developing Individualized Education Plans (IEPs) as needed.

Unacceptable	Acceptable	Target
Candidates recognize the components of planning and know that they are expected to meet the learning needs of each student.	Candidates demonstrate knowledge of the steps in developing plans to meet the learning needs of each student.	Candidates develop and implement plans as needed to meet the learning needs of each student.

<sup>1</sup>Candidates. Individuals admitted to or enrolled in programs for the First preparation of teachers. Candidates are distinguished from students in P-12 school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004).

#### §1103. Management

A. The teacher education program provides candidates at both the initial and advanced levels with knowledge and skills in the management component, which includes maintaining an environment conducive to learning, maximizing instructional time, and managing learner behavior.

Unacceptable	Acceptable	Target
Candidates understand various approaches to classroom/behavior management.	Candidates create a positive learning environment, maximize instructional time, and manage learner behavior.	Candidates create a positive learning environment, maximize instructional time, and manage learner behavior, making adjustments as necessary to meet the learning needs of each student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004).

#### §1105. Instruction

A. The teacher education program provides candidates at both the initial and advanced levels with skills for delivering effective instruction, presenting appropriate content, providing for student involvement, and assessing and facilitating student growth.

Unacceptable	Acceptable	Target
Candidates recognize the components of instruction that meet the learning needs of each student.	Candidates demonstrate use of instructional components that meet the learning needs of each student.	Candidates demonstrate effective instruction that results in positive learning outcomes for each student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004).

#### §1107. Curriculum

A. The teacher education curricula provide candidates at both the initial and advanced levels with knowledge and skills to effectively incorporate the Louisiana Content Standards in instructional delivery.

Unacceptable	Acceptable	Target
Candidates understand the basic components of the Louisiana Content Standards.	Candidates demonstrate knowledge of the Louisiana Content Standards in lessons for each content area they are preparing to teach.	Candidates implement instruction and assessment reflective of content standards, local curricula, and each student's needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004).

#### §1109. Curriculum-Reading (Specifically but not Exclusively for K-3 Teachers)

A. The teacher education program provides candidates at both the initial and advanced levels with knowledge and skills in the curriculum process.



Unacceptable	Acceptable	Target
Candidates understand the elements of a balanced approach to reading instruction.	Candidates use a balanced approach to reading instruction and assessment in K-3 classrooms.	Candidates effectively use a balanced approach to reading instruction and assessment in K-3 classrooms to impact learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004).

**§1111. Curriculum Mathematics (Specifically but not exclusively for K-3 teachers)**

A. The teacher education program provides candidates at both the initial and advanced levels with knowledge and skills in the curriculum process.

Unacceptable	Acceptable	Target
Candidates understand the elements of reform mathematics.	Candidates use reform mathematics content and pedagogy in providing instruction.	Candidates effectively use reform mathematics content and pedagogy in instruction and assessment, including the use of manipulatives and/or the application of content to real life situations, resulting in improved student learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004).

**§1113. Technology**

A. The teacher education program provides candidates at both initial and advanced levels with skills to plan and deliver instruction that integrates a variety of software, applications, and related technologies appropriate to the learning needs of each student.

Unacceptable	Acceptable	Target
Candidates understand how to use technology.	Candidates create and use instruction and assessment that integrate technology into the curriculum.	Candidates effectively integrate technology into the curriculum with instruction and assessment that result in improved student learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004).

**§1115. Professional Development**

A. The teacher education program provides candidates at both the initial and advanced levels with information and skills for planning professional self-development.

Unacceptable	Acceptable	Target
No evidence exists that candidates were exposed to the need for ongoing professional development.	Candidates plan and pursue professional development activities required by the university and/or First employing school system.	Candidates develop an individualized professional development plan based upon their self-assessment, reflection, and long term professional goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004).

**§1117. School Improvement**

A. The teacher education program provides candidates at both the initial and advanced levels with preparatory experiences in school improvement that includes taking an active role in school decision-making and creating relevant partnerships.

Unacceptable	Acceptable	Target
Candidates understand the processes of school improvement.	Candidates review and are familiar with school improvement efforts at the school and district levels.	Candidates participate in school improvement efforts by serving on committees and forming partnerships with community groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004).

**Subchapter B. Standard B Candidates and/or Graduates of Teacher Education Programs Participate in the Accountability and Testing Process**

**§1119. School and District Accountability System**

A. The Teacher Education Program provides candidates at both the initial and advanced levels with knowledge and skills regarding the utilization of the Louisiana School and District Accountability System (LSDAS).

Unacceptable	Acceptable	Target
Candidates understand the basic components of the LSDAS.	Candidates investigate documents, data, and procedures used in LSDAS.	Candidates take an active role in the school growth process as related to the LSDAS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004).

**§1121. Testing**

A. The teacher education program provides candidates at both the initial and advanced levels with information on the Louisiana Educational Assessment Program (LEAP 21) to enhance their testing and measurement practices related to learning and instruction.

Unacceptable	Acceptable	Target
Candidates understand the basic components of the Louisiana Educational Assessment Program (LEAP 21).	Candidates plan and implement instruction that correlates with LEAP 21.	Candidates interpret LEAP 21 test data and apply results to impact student achievement positively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004).

## Chapter 13. Identifications of Acronyms

### §1301. Acronyms

A. Listed below are the full identifications of acronyms used in this publication:

- ACT American College Test;
- AFT American Federation of Teachers;
- BOE Board of Examiners;
- BOR Board of Regents;
- CEO Chief Executive Officer;
- K-3 Kindergarten through 3rd grade;
- LEAP 21 Louisiana Educational Assessment Program for the 21st century;
- LSBESE Louisiana State Board of Elementary and Secondary Education;
- LSDAS Louisiana School and District Accountability System. LSDAS's intent is to establish a systematic approach to assessing instructional effectiveness of schools and districts based primarily upon student achievement;
- LSDE Louisiana State Department of Education;
- LUAB Louisiana Unit Accreditation Board;
- NCATE National Council for the Accreditation of Teacher Education;
- NEA National Education Association;
- P-12 Pre-kindergarten through 12th grades;
- UAB Unit Accrediting Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(11), R.S. 17:7(6), R.S. 17:7.2, R.S. 17:13.1, R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1736 (August 2002), amended LR 30:2459 (November 2004).

Weegie Peabody  
Executive Director

0411#009

### RULE

#### Board of Elementary and Secondary Education

Bulletin 1179 Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools (LAC 28:XXXI.511)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 1179 Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools* (LAC 28:XXXI). H.B. 129, Act 312, requires that at least 30 minutes of instruction relative to organ and tissue donation be added to the Drivers Education Curriculum.

### Title 28 EDUCATION

#### Part XXXI. Bulletin 1179 Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools Chapter 5. Administrative Policies

### §511. SBESE Regulations Governing Driver Education

A. - A.1.b. ...

c. The Driver Education and/or Training Course(s) must be comprised of classroom and laboratory instructional phases meeting the following standards.

i. Classroom Instruction. This phase of instruction:

(a). must be offered for a minimum of 30.5 clock hours (with no more than five clock hours of instruction to be given during any 24 hour period);

A.1.c.i.(b). - A.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(5).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1221 (July 1999), amended LR 30:2459 (November 2004).

Weegie Peabody  
Executive Director

0411#010

### RULE

#### Board of Elementary and Secondary Education

Bulletin 1196 Louisiana Food and Nutrition Programs, Policies of Operation (LAC 28:XLIX.1105, 1503, 1509, 1511, and 1517)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 1196 Louisiana Food and Nutrition Programs, Policies of Operation* (LAC 28:XLIX). Bulletin 1196 is the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Child Nutrition Programs in Louisiana. This is an update of Federal and State policies.

### Title 28 EDUCATION

#### Part XLIX. Bulletin 1196 Louisiana Food and Nutrition Programs, Policies of Operation Chapter 11. Personnel

### §1105. Provisional Child Nutrition Program Director/Supervisor

A. A special provisional certificate, which went into effect January 1, 1977, may be issued to an individual employed as acting CNP director or supervisor. This certificate will be valid for one year and renewable each year thereafter upon presentation of six semester hours of applicable credit toward completion of all requirements for permanent certification as a CNP director/supervisor.

B. Special provisional certificates shall be issued only to persons with a baccalaureate or master's degree in Family and Consumer Science (Home Economics), Institutional Management, Nutrition, Dietetics, Business Administration, Food Technology, Public Health Nutrition, or other health related fields from a regionally accredited institution of higher education. This certificate does not authorize the holder to perform any services in the school system of Louisiana other than to act as a CNP director/supervisor. Payment from school food service funds shall be made only for CNP directors/supervisors and acting supervisors who meet all of the foregoing certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2163 (December 2001), amended LR 30:2459 (November 2004).

## Chapter 15. Procurement

### §1503. Procurement Systems

#### A. Competitive Sealed Bids (Formal)

1. All purchases of materials and supplies exceeding the aggregate sum of \$20,000 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 \$20,000, but the total invoices during the two-month period are over \$20,000. 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 \$20,000 must be documented for review and audit purposes.

3. SFAs may divide schools into districts, but assigning each district to a local vendor is prohibited. This practice would not allow open and free competition. Schools may be divided into districts to organize deliveries efficiently, but an adequate number of vendors must be allowed to submit price quotations for any or all of the districts.

4. Act No. 349, 1974 of state law requires every SFA to follow formal bid procedures for the purchase of milk and milk products for use in its schools regardless of dollar value.

5. Formal bid procedure requires formal advertising with adequate purchasing descriptions, sealed bids and public bid openings. The SFA desiring to let a contract for the purchase of materials or supplies shall in its resolution providing for the contract or purchase and for the advertisement of bids designate the time and place that the bids will be received and shall at that time and place publicly open the bids and read them aloud.

a. - e.iii. ...

#### f. Awarding Other than Low Bid

i. Causes for selecting a bid higher than the lowest bid might be the following.

(a). The item or service bid is not responsive to the specifications, to the invitation to bid, or to the general instructions.

(b). The bidder is not responsible. Vendor integrity has been documented by the vendor's record of past performance.

(c). The financial and technical resources of the bidder are not adequate.

(d). There is evidence of noncompliance with public policy (EEO, EPA, etc.).

ii. A SFA should document on the bid evaluation sheet the reason the lowest bid was not accepted. If the bid is not responsive, the SFA should document what requirement it did not meet. If the SFA knows that a vendor is not responsible, every effort should be made to disqualify the vendor prior to the issuing of invitations to bid. This action would prevent the possibility of having to decline a low bid.

5.g. - 6.d. ...

#### B. Small Purchase Procedures (price quotes)

1. Small purchase procedures may be used when:

a. the aggregate amount does not exceed \$20,000.00; and/or

b. the purchases are for highly perishable materials.

2. Purchases of materials and supplies for which the aggregate amount does not exceed \$20,000 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 \$20,000. 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. - 4....

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2183 (December 2001), amended LR 29:2032 (October 2003), LR 30:2460 (November 2004).

### §1509. Other Procurement Methods

A. - D.1.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 \$20,000. Documentation of contacts must be maintained. Competitive sealed bids (formal advertising) must be used when the aggregate amount is over \$20,000. If the aggregate amount of a purchase exceeds \$20,000, 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, LR 27:2186 (December 2001), amended LR 29:2033 (October 2003), LR 30:2460 (November 2004).

### §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 \$20,000

shall be advertised and awarded to the lowest responsible bidder. Purchases less than \$20,000 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, LR 27:2187 (December 2001), amended LR 29:2033 (October 2003), LR 30:2460 (November 2004).

### §1517. Contract Provisions

A. - E.3. ...

F. Multi-Year Contract

1. The multi-year method of contracting is used when a special production of definite quantities of supplies for more than one fiscal period is necessary to meet needs most effectively, but funds are available only for the initial fiscal period. A multi-year contract is also appropriate when it is in the best interest of the SFA to obtain uninterrupted services extending over more than one fiscal period, when the performance of such services involves high start-up costs, or when a changeover of service contractors involves high phase in/phase out costs during a transition period.

2. When a multi-year contract is used by the SFA, the contract shall include a clause stating that the multi-year contract will be cancelled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period following the first year.

G. Extending a Contract

1. Extension of a contract into the next bid period can be granted only under special circumstances. Since extending a bid period is a modification of the contract, the SFA must perform some form of cost or price analysis. Because circumstances that would justify a bid extension are unlikely, it is required that the SFA contact the state agency for permission should a need for a contract extension arise.

H. Energy Conservation Provision

1. Contracts will recognize mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act P.L. 94-163.

I. Termination Provisions for Contracts over \$20,000

1. All contracts over \$20,000 must contain suitable provisions for termination by the grantee including the manner that the termination will be effected and the basis for settlement. In addition, such contracts shall describe the conditions under which the contract may be terminated for default because of circumstances beyond the control of the contractor.

J. Equal Opportunity Provision for Contracts over \$20,000

1. All contracts over \$20,000 must contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 40 CFR Part 60.

K. Clean Air and Water Provisions for Contracts over \$100,000

1. All contracts over \$100,000 shall contain a provision that requires compliance with all applicable standards, orders, or requirements issued under §306 of the Clean Air Act 42 USC 1857(h), §508 of the Clean Water Act

33 USC 1368, Executive Order 11738, and Environmental Protection Agency regulations 40 CFR Part 15 that prohibit the use under nonexempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. The provision shall require reporting of violations to USDA and to the USEPA Assistant Administrator for Enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education. LR 27:2188 (December 2001), amended LR 30:2461 (November 2004).

Weegie Peabody  
Executive Director

0411#011

## RULE

### Board of Elementary and Secondary Education

Bulletin 1196 **C**Louisiana Food and Nutrition Programs,  
Policies of Operation (LAC 28:XLIX.3301)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 1196 Louisiana Food and Nutrition Programs, Policies of Operation* (LAC 28:XLIX). Bulletin 1196 is the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Child Nutrition Programs in Louisiana. This is an update of Federal and State policies.

This action will repeal §944.A from LAC 28:I and incorporate it into Bulletin 1196, §3301. Purpose.

## Title 28

## EDUCATION

### Part XLIX. Bulletin 1196 **C**Louisiana Food and Nutrition Programs, Policies of Operation Chapter 33. Financial Management and Accounting for Child and Adult Care Food Program Family Day Care Homes (FDCH)

#### §3301. Purpose

A. Child Care Registration for Participants in the Child and Adult Care Food Program. In compliance with R.S. 46:1441.4.B, the following rules and regulations are hereby established to carry out the provisions of this Chapter for those family child day care homes and group child day care homes which participate in the federal Child and Adult Care Food Program.

1. Definitions. As established by R.S. 1441.1 and as used in these rules and regulations, the following definitions shall apply unless the context clearly states otherwise.

*Child* **C**a person who has not reached the age of 13 years. The words *child* and *children* are used interchangeably in this Chapter.

*Child and Adult Care Food Program* **C**the federal nutrition reimbursement program as funded by the federal Department of Agriculture through the Department of Education.

*Department* **C**the Department of Health and Hospitals or the Department of Social Services or the Department of Education in accordance with 7 CFR Part 226, as indicated by the context.

*Family Child Day Care Home* Any place, facility, or home operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and/or guidance of six or fewer children.

*Group Child Day Care Home* Any place, facility, or home operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and/or guidance of seven but not more than 12 children.

*Sponsoring Agency* Any private, public, for profit or nonprofit corporation, society, agency, or any other group approved by or contracted with the Department of Education to coordinate family child day care homes and group child day care homes participating in the federal Child and Adult Care Food Program.

2. All Group Child Day Care Homes which participate in the Child and Adult Care Food Program (CACFP) shall be licensed through the Department of Social Services in accordance with the provisions of R.S. 46:1401-1424.

3. All Family Child Day Care Homes which participate in the Child and Adult Care Food Program (CACFP) shall be registered through the Department of Education according to the following criteria:

- a. the facility shall be the private residence of the child care provider;
- b. the provider shall enter into the required program agreement with a Department of Education-approved CACFP sponsor;
- c. the provider shall attend a minimum of one sponsor-conducted training session per year;
- d. no more than six children shall be in attendance at the facility;
- e. the facility shall be inspected and approved in accordance with R.S. 46:1441. Inspection criteria shall be as follows:
  - i. matches, lighters and other sources of ignition shall be kept out of reach of children;
  - ii. portable electric heaters shall be of an approved type, shall be equipped with a tilt switch and shall be located away from combustibles;
  - iii. at least one smoke detector shall be properly installed, located and maintained;
  - iv. protective receptacle covers shall be installed in all areas occupied by children under five years of age;
  - v. every room used for sleeping, living, or dining purposes shall have at least two means of escape, at least one which is a door or stairway providing a means of unobstructed travel to the outside of the building. If the home has burglar bars, the burglar bars shall have either release latches or keys in the locks during all hours of child care. If the home has doors with dead bolt locks, the dead bolt locks shall have keys inserted in the locks during all hours of child care. If the home has jalousie windows which do not meet size requirements, the rooms shall not be used for sleeping during any hours of child care;
  - vi. stairways shall be maintained free of storage items;

vii. every closet door shall be designed to permit the opening of the locked door from inside the closet;

viii. every bathroom door lock must be designed to permit the opening of the locked door from the outside in an emergency. The opening device must be readily accessible;

ix. a properly charged portable fire extinguisher (minimum 2A) must be readily accessible;

x. the hot water heater shall be properly installed;

xi. the facility shall have adequate lighting and ventilation;

xii. unvented fuel-fired room heaters shall be used only in rooms in which a window is raised;

xiii. flammable liquids shall be properly stored;

xiv. combustibles shall be stored away from heating units or water heaters;

xv. wiring, fixtures and appliances in the facility shall be safe;

xvi. the facility shall have an adequate water supply and a working sewerage system;

xvii. the facility shall be clean and free of insect and rodent infestation;

xviii. garbage shall be disposed of properly; and

xix. the temperature of the refrigerator shall be maintained at or below 45°F. (A thermometer shall be left in the refrigerator for at least 10 minutes to achieve an accurate reading); and

f. The facility inspection as referenced in §3301.A.3.e above shall be conducted annually. However, facilities which are complying with applicable procedures to renew registration may participate in the CACFP during the renewal process unless the Department of Education has information which indicates that renewal will be denied.

B. Federal Child and Adult Care Food Program (CACFP) funds are provided to assist state agencies through grants and other means to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions that provide care. The CACFP home-based program is called the Family Day Care Home (FDCH) Program.

C. This Chapter summarizes the most frequently referenced elements of the federal regulations that govern the FDCH program financial management, and stipulates the state agency's financial management policies. This Chapter exists to assure that costs charged to nonprofit food service provided principally to enrolled participants; and where applicable, to assure that costs claimed for reimbursement under the CACFP are allowable, necessary, and reasonable for effective and efficient operation of the program; and to assist institutions in developing the accounting information needed to comply with the requirements of the CACFP.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2208 (December 2001), amended LR 30:2461 (November 2004).

Weegie Peabody  
Executive Director

0411#012

## RULE

### Department of Environmental Quality Office of Environmental Assessment

#### Accident Prevention Regulations Incorporation by Reference (LAC 33:III.5901)(AQ245\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.5901 (Log #AQ245\*).

This Rule is identical to federal regulations found in 69 FR 18819-18832, April 9, 2004, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule change incorporates by reference amendments published in the *Federal Register* to "Accidental Release Prevention Requirements: Risk Management Program Requirements Under Clean Air Act Section 112(r)(7)"; Amendments to the Submission Schedule and Data Requirements. EPA made several changes to the reporting requirements of the accident prevention regulations. Provisions of these changes may be operative before the department proceeds with its annual incorporation by reference in 2005. This action is required to keep the federal and state rules consistent with one another. The basis and rationale for this Rule are to mirror the federal regulations.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part III. Air

### Chapter 59. Chemical Accident Prevention and Minimization of Consequences

#### Subchapter A. General Provisions

#### **§5901. Incorporation by Reference of Federal Regulations**

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2003. Also incorporated by reference are amendments to EPA rule entitled "Accidental Release Prevention Requirements: Risk Management Program Requirements Under Clean Air Act Section 112(r)(7)"; Amendments to the Submission Schedule and Data Requirements, promulgated on April 9, 2004, in the *Federal Register*, 69 FR 18819-18832.

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212

(December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004).

Wilbert F. Jordan, Jr.  
Assistant Secretary

0411#030

## RULE

### Department of Environmental Quality Office of Environmental Assessment

#### Hazardous Waste Delisting (LAC 33:V.105 and 4999)(HW086)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Hazardous Waste regulations, LAC 33:V.105 and 4999.Appendix E (Log #HW086).

Departmental policies regarding petitions for exclusion from the hazardous waste regulations (hazardous waste delistings) are being codified. Petitioners are required to use an independent laboratory and an independent data validator. Analyses of dioxins and furans are included in all four sampling rounds. Certain laboratory data are specified for submittal to the department. The sections titled Data Submittal, Reopener Language, and Notification Requirements in LAC 33:V.4999.Appendix E are being standardized for all conditional hazardous waste exclusions under LAC 33:V.105.M. This action establishes a consistency in the requirements for hazardous waste exclusion petitioners. The basis and rationale for this Rule are to codify current departmental policy and to make necessary provisions enforceable and consistent among all the hazardous waste rulemakings.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials Subpart 1. Department of Environmental Quality— Hazardous Waste

#### Chapter 1. General Provisions and Definitions **§105. Program Scope**

These Rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these Rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

A. - M.6. ...

7. Each petition must include, in addition to the information required by LAC 33:I.Chapter 9:

a. the name and address of the independent laboratory facility, accredited by the state of Louisiana in accordance with LAC 33:I.Subpart 3, performing the sampling or tests of the waste;

b. - i. ...

j. a description of the tests performed (including results):

i. during the first sampling round, these tests must include the Toxicity Characteristic Leaching Procedure (TCLP) analysis of all the groundwater monitoring constituents listed in LAC 33:V.3325.Table 4 and analysis of total volatiles, semi-volatiles, and metals;

ii. all four sampling rounds must include analyses of dioxins and furans;

iii. all lab data, including instrument tuning, method blanks, field blanks, trip blanks, calibration data, chromatograms, duplicates, matrix spikes, and matrix spike duplicates, must be included;

k. the names and model numbers of the instruments used in performing the tests;

l. a report indicating that the data was reviewed by an independent data validator before being submitted to the department; and

m. the following statement signed by the generator of the waste or his authorized representative:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

M.8. - O.2.c.vi....

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687 (September 1998), LR 24:1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003),

LR 30:1680 (August 2004), amended by the Office of Environmental Assessment LR 30:2463 (November 2004).

## **Chapter 49. Lists of Hazardous Wastes**

### **§4999. Appendices A, B, C, D, E**

Appendix A. - Appendix D. ...

#### **Appendix E. Wastes Excluded Under LAC 33:V.105.M**

A. Each facility granted a conditional exclusion must comply with the specific conditions for the waste exclusion as listed in Table 1 of this Appendix. Each waste exclusion listed in Table 1 shall begin with a waste description and include details for the following conditions:

1. testing, including organic and/or inorganic constituents, dioxins, furans, etc.;

2. waste holding and handling;

3. delisting levels, including organic and/or inorganic constituents, dioxins, furans, etc.; and

4. changes in operating conditions or feed streams.

B. Each facility granted a conditional exclusion must comply with the following general conditions pertaining to the waste exclusion listed in Table 1 of this Appendix.

1. Data Submittal

a. The facility must notify the department, in writing, at least two weeks prior to initiating the specific testing required for the waste exclusion.

b. All data obtained to fulfill the required testing must be submitted to the Office of Environmental Assessment within 60 days after each sampling event.

c. Records of operating conditions and analytical data from the required testing must be compiled, summarized, and maintained on-site for a minimum of three years. These records and data must be furnished upon request of the department and made available for inspection.

d. Failure to submit the required data within the specified time period or failure to maintain the required records on-site for the specified time shall be considered by the department, at its discretion, sufficient basis to revoke the exclusion.

e. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In the event that any of this information is determined by the department, in its sole discretion, to be false, inaccurate, or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had been in effect, or to the extent directed by the department, and that the company will be liable for any actions taken in contravention of the company's environmental obligations under the Louisiana Environmental Quality Act premised upon the company's reliance on the void exclusion."

2. Reopener Language

a. If, at any time after disposal of the delisted waste, the facility possesses or is otherwise made aware of any environmental data (including, but not limited to, leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by the department in

granting the petition, the facility must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data.

b. If the testing of the waste, as required by the waste exclusion, does not meet the specific delisting requirements of the waste exclusion, the facility must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data.

c. Based on the information described herein and any other information received from any source, the department will make a preliminary determination as to whether the reported information requires that the department take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or such other appropriate response as may be necessary to protect human health and the environment.

d. If the department determines that the reported information does require departmental action, the department will notify the facility, in writing, of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action is not necessary. The facility shall have 10 days from the date of the department's notice to present such information.

e. Following the receipt of information from the facility, or if no such information is received within 10 days, the department will issue a final written determination describing the departmental actions that are necessary to protect human health or the environment.

f. Any required action described in the department's determination shall become effective immediately, unless the department provides otherwise.

**3. Notification Requirements**

a. The facility must provide a one-time written notification to any state regulatory agency in a state to which or through which the delisted waste will be transported, at least 60 days prior to the commencement of such activities.

b. Failure to provide notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

<b>Table 1 - Wastes Excluded</b>
<b>DuPont Dow Elastomers LLC, LaPlace, LA</b>
<p>(1)(A). Inorganic Testing During the first 12 months of this exclusion, DuPont Dow must collect and analyze a monthly grab sample of the Dynawave Scrubber Effluent. DuPont Dow must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for chromium, nickel, and zinc, including quality control information. If the department and DuPont Dow concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then DuPont Dow may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.</p>
<p>(1)(B). Subsequent Inorganic Testing Following concurrence by the department, DuPont Dow may substitute the following testing conditions for those in condition (1)(A). DuPont Dow must continue to monitor operating conditions and analyze samples representative of each year of operation. The samples must be grab samples from a randomly chosen operating day during the same month of operation as the previous year's sampling event. These annual representative grab samples must be analyzed for chromium, nickel, and zinc. DuPont Dow may, at its discretion, analyze any samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p>
<p>(1)(C). Organic Testing During the first 30 days of this exclusion, DuPont Dow must collect a grab sample of the Dynawave Scrubber Effluent and analyze it for the organic constituents listed in condition (3)(B) below. After completing this initial sampling, DuPont Dow shall sample and analyze for the organic constituents listed in condition (3)(B) on an annual basis.</p>
<p>(1)(D). Dioxins and Furans Testing During the first 30 days of this exclusion, DuPont Dow must collect a grab sample of the Dynawave Scrubber Effluent and analyze it for the dioxins and furans in condition (3)(C) below. After completing this initial sampling, DuPont Dow shall sample and analyze for the dioxins and furans in condition (3)(C) once every three years to commence three years after the initial sampling.</p>
<p>(2). Waste Holding and Handling Consequent to this exclusion, the Dynawave Scrubber Effluent becomes, on generation, nonhazardous solid waste and may be managed and disposed of on the DuPont Dow plant site in any one of three permitted underground deep injection wells. With prior written authorization from the department, alternative disposal methods may be either a Louisiana Pollution Discharge Elimination System/National Pollution Discharge Elimination System (LPDES/NPDES) permitted outfall or a permitted commercial underground deep injection well. This newly delisted waste must always be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in any representative sample equal or exceed any of the delisting levels set in condition (3), the Dynawave Scrubber Effluent must be immediately resampled and reanalyzed for the constituent(s) that exceeded the delisting levels. If the repeat analysis is less than the delisting levels, then DuPont Dow shall resume the normal sampling and analysis schedule as described in condition (1). If the results of the reanalysis equal or exceed any of the delisting levels, then within 45 days DuPont Dow shall submit a report to the department that outlines the probable causes for exceeding the constituent level and recommends corrective action measures. The department shall determine the necessary corrective action and shall notify DuPont Dow of the corrective action needed. DuPont Dow shall implement the corrective action and resume sampling and analysis for the constituent per the schedule in condition (1). Within 30 days after receiving written notification, DuPont Dow may appeal the corrective action determined by the department. During the full period of corrective action determination and implementation, the exclusion of the Dynawave Scrubber Effluent shall remain in force unless the department notifies DuPont Dow in writing of a temporary rescission of the exclusion. Normal sampling and analysis shall continue through this period as long as the exclusion remains in force.</p>
<p>(3). Delisting Levels The following delisting levels have been determined safe by taking into account health-based criteria and limits of detection. Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V. 4903.E. Concentrations in the extract must be less than the following levels (all units are milligrams</p>

<b>Table 1 - Wastes Excluded</b>
<b>DuPont Dow Elastomers LLC, LaPlace, LA</b>
<p>Dynawave Scrubber Effluent is generated through the combustion of organic waste feed streams carrying the listed EPA Hazardous Waste Numbers F001, F002, F003, and F005. The specific hazardous waste streams being combusted and their EPA Hazardous Waste Numbers are: HCl Feed - D001, D002, and D007; Ponchartrain CD Heels - D001 and F005; Waste Organics - D001, D007, and F005; Catalyst Sludge Receiver (CSR) Sludge - D001, D007, and F005; Isom Purge - D001, D002, and F005; and Louisville CD Heels - D001, D007, D039, F001, F002, F003, and F005. DuPont Dow Elastomers must implement a sampling program that meets the following conditions for the exclusion to be valid.</p> <p>(1). Testing Sample collections and analyses, including quality control (QC) procedures, must be performed according to methodologies described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.</p>



**Table 1 - Wastes Excluded**

per liter).

(3)(A). Inorganic Constituents  
Chromium - 2.0; Nickel - 2.0; Zinc - 200.

(3)(B). Organic Constituents  
Acetone - 80; Chlorobenzene - 2.0; Chloroform - 0.2; Chloroprene - 14;  
Ethylbenzene - 14; Methylene Chloride - 0.1; Styrene - 2.0; Toluene - 20;  
Xylenes - 200.

(3)(C). Dioxins and Furans  
The 15 congeners listed in Section 1.1 of EPA Publication Number SW-846 Method 8290 - Monitor only.

(4). Changes in Operating Conditions or Feed Streams  
If DuPont Dow either significantly changes the operating conditions specified in the petition or adds any previously unspecified feed streams and either of these actions would justify a Class 3 modification to its combustion permit, DuPont Dow must notify the department in writing. Following receipt of written acknowledgement by the department, DuPont Dow must collect a grab sample and analyze it for the full universe of constituents found in 40 CFR Part 264, Appendix IX - Ground Water Monitoring List (LAC 33:V.3325). If the results of the Appendix IX analyses identify no new hazardous constituents, then DuPont Dow must reinstitute the testing required in condition (1)(A) for a minimum of 12 monthly operating periods. During the full period described in this condition, the delisting of the Dynawave Scrubber Effluent shall remain in force unless a new hazardous constituent is identified or the waste volume exceeds 25,000 cubic yards per year; at this time the delisting petition shall be reopened. DuPont Dow may eliminate feeding any stream to the combustion unit at any time without affecting the delisting of the Dynawave Scrubber Effluent or the sampling schedule.

**Marathon Oil Co., Garyville, LA**

Residual solids are generated from the thermal desorption treatment of the following wastes: EPA Hazardous Waste Number K048, dissolved air flotation (DAF) float; K049, slop oil emulsion solids; K050, heat exchanger bundle cleaning sludge; K051, American Petroleum Institute (API) separator sludge; F037, primary oil/water/solids separation sludge; and F038, secondary emulsified oil/water/solids separation sludge. The constituents of concern for K048-K051 wastes are listed as hexavalent chromium and lead (see LAC 33:V. 4901). The constituents of concern for F037 and F038 wastes are listed as hexavalent chromium, lead, benzene, benzo(a)pyrene, and chrysene (see LAC 33:V.4901). Marathon must implement a testing program that meets the following conditions for the exclusion to be valid.

(1). Testing  
Sample collection and analyses, including quality control (QC) procedures, must be performed according to methodologies described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110. If the department judges the desorption process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in condition (1)(A) with the testing required in condition (1)(B). Marathon must continue to test as specified in condition (1)(A) until and unless notified by the department in writing that testing in condition (1)(A) may be replaced by condition (1)(B), or that testing requirements may be reduced or terminated as described in conditions (1)(C) and (1)(D) to the extent directed by the department.

(1)(A). Initial Verification Testing  
During at least the first four weekly operating periods of full-scale operation of the thermal desorption unit, Marathon must monitor the operating conditions of the thermal desorption unit to maintain a minimum residual solids temperature throughout the high temperature unit of 870°F. The residual solids must be analyzed as weekly composites. The weekly composites must be composed of a minimum of two representative grab samples from each operating day during each weekly period of operation. The samples must be analyzed for the constituents listed in condition (3) prior to disposal of the residual solids. Marathon must report the operational and analytical test data, including quality control information, obtained during this initial period, no later than 90 days after initiating full-scale processing.

**Table 1 - Wastes Excluded**

(1)(B). Subsequent Verification Testing  
Following notification of approval by the department, Marathon may substitute the following testing conditions for those in condition (1)(A). Marathon must continue to monitor operating conditions and analyze samples representative of each month of operation. The samples must be composed of eight representative samples from randomly chosen operating days during the four-week period of operation of each month. These monthly representative composite samples must be analyzed for the constituents listed in condition (3) prior to the disposal of the residual solids. Marathon may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

(1)(C). Termination of Monthly Organic Testing  
Marathon must continue to monitor unit operating conditions and perform testing as required under condition (1)(B), for the constituents listed in condition (3)(B), until the analyses submitted under condition (1)(B) show a minimum of three consecutive monthly representative samples with levels of constituents significantly below delisting levels listed in condition (3)(B). Following notification of approval by the department, Marathon may terminate monthly testing for the organic constituents found in condition (3)(B). Following termination of monthly testing for organic constituents, Marathon must test a representative composite sample, composited over a one-week time period, for all constituents listed in condition (3)(B) on a quarterly basis. If delisting levels for any organic constituents listed in condition (3)(B) are exceeded in the quarterly sample, Marathon must re-institute testing as required in condition (1)(B).

(1)(D). Termination of Monthly Inorganic Testing  
Marathon must continue to monitor unit operating conditions and perform testing as required under condition (1)(B), for the constituents listed in condition (3)(A), until the analyses submitted under condition (1)(B) show a minimum of three consecutive monthly representative samples with levels of constituents significantly below delisting levels listed in condition (3)(A). Following notification of approval by the department, Marathon may terminate monthly testing for the inorganic constituents found in condition (3)(A). Following termination of monthly testing for inorganic constituents, Marathon must test a representative composite sample, composited over a one-week time period, for all constituents listed in condition (3)(A) on a quarterly basis. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in the quarterly sample, Marathon must re-institute testing as required in condition (1)(B).

(2). Waste Holding and Handling  
Marathon must store as hazardous wastes all residual solids generated until each batch has completed verification testing, as specified in conditions (1)(A)-(1)(D), and has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of residual solids are below all of the applicable levels set forth in condition (3), then the residual solids thereby become nonhazardous solid wastes and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in any weekly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the residual solids generated during the corresponding period must be retreated to meet the delisting levels or managed and disposed of in accordance with subtitle C of RCRA.

(3). Delisting Levels  
The following delisting levels have been determined safe by taking into account health-based criteria and limits of detection. Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. Concentrations in the extract must be less than the following levels (all units are milligrams per liter).

(3)(A). Inorganic Constituents  
Antimony - 0.22; Arsenic - 0.40; Barium - 72; Beryllium - 0.14; Cadmium - 0.18; Chromium - 3.6; Lead - 0.54; Mercury - 0.072; Nickel - 3.6; Selenium - 1.0; Silver - 5.0; Vanadium - 7.2.

(3)(B). Organic Constituents  
Acenaphthene - 72; Benzene - 0.18; Benzo(a)anthracene - 0.050; Benzo(a)pyrene - 0.050; Benzo(b)fluoranthrene - 0.050; Bis(2-ethylhexyl)phthalate - 0.22; Chrysene - 0.05; Ethylbenzene - 25; Fluoranthrene - 72; Fluorene - 72; Naphthalene - 36; Pyrene - 72; Toluene - 36.

**Table 1 - Wastes Excluded**

(4). Changes in Operating Conditions  
After completing the initial verification test period in condition (1)(A), if Marathon significantly changes the operating conditions specified in the petition, Marathon must notify the department in writing. Following receipt of written approval by the department, Marathon must re-institute the testing required in condition (1)(A) for a minimum of four weekly operating periods. Marathon must report unit operating conditions and test data required by condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Marathon may replace testing condition (1)(A) with (1)(B), or reduce or terminate testing requirements as described in conditions (1)(C) and (1)(D) to the extent directed by the department. Marathon must fulfill all other requirements in condition (1).

(4)(A). Processing Equipment  
Marathon may elect to change thermal desorption processing equipment based on operational performance and economic considerations. In the event that Marathon changes operating equipment, i.e., generic thermal desorption units, Marathon must re-institute processing and initiate testing required in condition (1)(A) for a minimum of four weekly operating periods. Marathon must report unit operating conditions and test data required in condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Marathon may replace testing condition (1)(A) with (1)(B), or reduce or terminate testing requirements as described in conditions (1)(C) and (1)(D) to the extent directed by the department. Marathon must fulfill all other requirements in condition (1).

(4)(B). Batch Processing  
Marathon may periodically elect to change operating conditions to accommodate batch processing of single-event waste generations. In the event that Marathon initiates batch processing and changes the operating conditions established under condition (1), Marathon must re-institute the testing required in condition (1)(A) during such batch processing events and monitor unit operating conditions and perform testing required by condition (1)(A), as appropriate. Following the completion of batch processing operations, Marathon must return to the operating conditions applicable prior to initiation of the batch processing and may return to the testing conditions that were applicable prior to the initiation of the batch processing activities.

**Motiva Enterprises LLC, Norco, LA**

Residual solids, at a maximum annual generation rate of 10,000 cubic yards per year (7,500 tons/year), are generated from the thermal desorption recycling of oil-bearing secondary materials resulting from petroleum processing operations, which are classified as newly generated EPA Hazardous Waste Number F037, petroleum refinery primary oil/water/solids separation sludge (effective February 8, 1999, per the updated definition promulgated on August 6, 1998, and the corrected definition dated June 8, 2000). For the purpose of this exclusion, oil-bearing hazardous secondary materials resulting from petroleum refining operations include EPA Hazardous Waste Numbers K048-K052, K169-K170, F037, and F038. The constituents of concern for F037 waste are listed as hexavalent chromium, lead, benzene, benzo(a)pyrene, and chrysene (see LAC 33:V.4901). Motiva must implement a testing and management program that meets the following conditions for the exclusion to be valid.

(1). Testing  
Sample collection and analyses, including quality control (QC) procedures, must be performed according to methodologies described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.

(1)(A). Inorganic Testing  
During the first 12 months of this exclusion, Motiva must collect and analyze a monthly composite sample of the residual solids. Composite samples must be composed of a minimum of two representative grab samples from each operating day during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for antimony, arsenic, barium, chromium, lead, mercury, nickel, selenium, silver, vanadium, and zinc, including

**Table 1 - Wastes Excluded**

quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then Motiva may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.

(1)(B). Subsequent Inorganic Testing  
Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(A). Motiva must continue to monitor operating conditions and analyze quarterly composite samples representative of normal operations. The samples must be composed of representative grab samples from each operating day during a representative week of operation, during the first month of each quarterly period. These quarterly representative composite samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in the quarterly sample, Motiva must re-institute testing as required in condition (1)(A). Motiva may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

(1)(C). Organic Testing  
During the first 12 months of this exclusion, Motiva must collect and analyze two monthly grab samples of the residual solids. These two representative grab samples should be collected on different operating days during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for anthracene, benzene, toluene, xylenes, carbon disulfide, chrysene, naphthalene, and pyrene, including quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(B), then Motiva may replace the organic testing required in condition (1)(C) with the organic testing required in condition (1)(D). Condition (1)(C) shall remain effective until this concurrence is reached.

(1)(D). Subsequent Organic Testing  
Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(C). Motiva must continue to monitor operating conditions and analyze two annual grab samples representative of normal operations. The samples must be representative grab samples from different operating days during a representative week of operation, during the first month of each annual period. These annual representative grab samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. If delisting levels for any organic constituents listed in condition (3)(B) are exceeded in the annual sample, Motiva must re-institute testing as required in condition (1)(C). Motiva may, at its discretion, analyze grab samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

(2). Waste Holding and Handling  
Motiva must store as hazardous wastes all residual solids generated until each batch has completed verification testing, as specified in conditions (1)(A) - (1)(D), and has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of residual solids are below all of the applicable levels set forth in condition (3), then the residual solids thereby become nonhazardous solid wastes and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any monthly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the residual solids generated during the corresponding period must be retreated and/or stabilized as allowed below until the residual solids meet the delisting levels, or managed and disposed of in accordance with Subtitle C of RCRA. If the residual solids contain leachable inorganic concentrations at or above the delisting levels set forth in condition (3)(A), then Motiva may stabilize the material with Type 1 portland cement and/or hydrated lime, as demonstrated in the petition, to immobilize the metals. Following stabilization, Motiva must repeat analyses in condition (3)(A) prior to disposal.

(3). Delisting Levels  
Concentrations in conditions (3)(A) and (3)(B) must be measured in the

**Table 1 - Wastes Excluded**

extract from the samples by the method specified in LAC 33:V.4903.E. All leachable concentrations in the extract must be less than the following levels (all units are milligrams per liter).

**(3)(A). Inorganic Constituents**

Antimony - 0.50; Arsenic - 0.50; Barium - 50.0; Chromium - 0.50; Lead - 0.50; Mercury - 0.05; Nickel - 5.0; Selenium - 1.0; Silver - 0.5; Vanadium - 1.6; Zinc - 50.0.

**(3)(B). Organic Constituents**

Anthracene - 0.20; Benzene - 0.10; Carbon disulfide - 4.8; Chrysene - 0.05; Naphthalene - 0.05; Pyrene - 0.05; Toluene - 0.10; Xylenes - 0.10.

**(4). Changes in Operating Conditions**

If Motiva significantly changes the operating conditions specified in the petition, Motiva must notify the department in writing. Following receipt of written approval by the department, Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required by conditions (1)(A) and (1)(C), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).

**(4)(A). Processing Equipment**

Motiva may elect to change thermal desorption processing equipment based on operational performance and economic considerations. In the event that Motiva changes operating equipment, i.e., generic thermal desorption units, Motiva must re-institute processing and initiate testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required in conditions (1)(A) and (1)(C), including quality control data, obtained during this period, no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).

**(4)(B). Batch Processing**

Motiva may periodically elect to change operating conditions to accommodate batch processing of single-event waste generations. In the event that Motiva initiates batch processing and changes the operating conditions established under condition (1), Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) during such batch processing events, monitor unit operating conditions, and perform testing required by conditions (1)(A) and (1)(C), as appropriate. Following the completion of batch processing operations, Motiva must return to the operating conditions applicable prior to initiation of the batch processing and may return to the testing conditions that were applicable prior to the initiation of the batch processing activities.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment LR 30:2464 (November 2004).

Wilbert F. Jordan, Jr.  
Assistant Secretary

0411#031

**RULE**

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

**Surface Water Quality Standards Reclassification of New Iberia Southern Drainage Canal and Its Ancillary Waters  
(LAC 33:IX.1123)(WQ056)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.1123.Table 3 (Log #WQ056).

This Rule reclassifies the New Iberia Southern Drainage Canal and its ancillary waters, Rodere Canal, Port Canal, and Commercial Canal, (Subsegment 060904) as man-made water bodies in accordance with LAC 33:IX.1105 and 1109.C.2. Site-specific criteria have been developed for dissolved oxygen (DO) and bacteria (BAC) to support the reclassification. Revised designated uses are listed in LAC 33:IX.1123.Table 3. The appropriate dissolved oxygen criteria for this subsegment are 3.0 mg/L November through April, and 2.0 mg/L May through October. General and numerical criteria not specifically excepted in LAC 33:IX.1123.Table 3 shall apply. This action is required to establish appropriate and protective criteria for Subsegment 060904. A site-specific Use Attainability Analysis (UAA) was conducted in accordance with state and federal water quality regulations, policies, and guidance to develop the appropriate uses and site-specific criteria for these water bodies.

UAAs 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 this Rule are to establish site-specific uses for Subsegment 060904 and site-specific criteria for dissolved oxygen (DO) and bacteria (BAC) supportive of the uses.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part IX. Water Quality**

**Subpart 1. Water Pollution Control**

**Chapter 11. Surface Water Quality Standards  
§1123. Numerical Criteria and Designated Uses**

A. - C.2. ...

3. Designated Uses. The following are the category definitions of designated uses that are used in Table 3 under the subheading "Designated Uses."

A Primary Contact Recreation  
 B Secondary Contact Recreation  
 C Fish and Wildlife Propagation  
 L Limited Aquatic Life and Wildlife Use  
 D Drinking Water Supply

E Oyster Propagation  
 F Agriculture  
 G Outstanding Natural Resource Waters  
 Numbers in brackets, e.g. [1], refer to endnotes listed at the end of the table.

Table 3. Numerical Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish and Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Criteria						
* * *									
[See Prior Text in 010101-050901]									
Vermillion-Teche River Basin (06)									
* * *									
[See Prior Text in 060101-060903]									
060904	New Iberia Southern Drainage Canal-Origen to Weeks Bay, including Rodere Canal, Commercial Canal, and Port Canal (Estuarine)	A B L [24]	N/A	N/A	[24]	6.5 - 9.0	[24]	35	N/A
* * *									
[See Prior Text in 060906-120806]									

**ENDNOTES:**

[1] - [23] ...  
 [24] Designated Man-Made Water Bodies; Seasonal DO Criteria: 3.0 mg/L November-April, 2.0 mg/L May-October; Rodere Canal and Commercial Canal have BAC 2; Port Canal and New Iberia Southern Drainage Canal have BAC 1.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:1474 (July 2004), amended by the Office of Environmental Assessment LR 30:2468 (November 2004).

Wilbert F. Jordan, Jr.  
 Assistant Secretary

0411#032

**RULE**

**Office of the Governor  
 Board of Architectural Examiners**

**Informal Procedures for Violations (LAC 46:I.1903)**

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:950 et seq., the Board of Architectural Examiners ("board") amended LAC 46:I.1903 pertaining to the procedures which it will use to receive, investigate, process, and dispose of possible violations of the architects licensing law (R.S. 37:141 et seq.) and its rules, including the implementation of an informal procedure for resolving possible violations without a full board hearing. The existing Rule does not contain an informal procedure for resolving possible violations. The amendments have no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

**Title 46  
 PROFESSIONAL AND OCCUPATIONAL  
 STANDARDS**

**Part I. Architects**

**Chapter 19. Rules of Conduct: Violations**

**§1903. Violations**

A.1. When the board receives a complaint, report, or other information which, if established as being true, would constitute just cause under the law for revocation, suspension, denial of license, or other form of discipline or punishment specified in R.S. 37:153 or R.S. 37:154, the board may:

- a. conduct its own investigation or inquiry;
- b. refer the matter to an investigator for an investigation;
- c. refer the matter to its Complaint Review Committee ("CRC"); and/or
- d. file its own complaint against the architect or the other person (hereinafter in this Section the "respondent") who may have violated the law or rules.

2. In accordance with R.S. 37:153.F, a complaint (whether made by the board or other person) shall be in the form of a sworn affidavit. If a complaint, report, or other such information is received by the executive director, the director will, within her discretion, forward same to either the board (for action consistent with this Section) or to the CRC.

B. The CRC is a committee of the board appointed by the president consisting of at least two board members. The CRC may review complaints and other information concerning possible violations of law or rules, make or have made whatever investigation it deems appropriate concerning such possible violations, file complaints, decide whether an attempt should be made to resolve alleged violations informally (without a full board hearing), discuss or confer with a respondent concerning the alleged violations and/or a possible resolution thereof, make recommendations to the full board concerning a possible resolution of the alleged violations (if the respondent consents to such recommendations), present and explain any recommendations made to the full board, and generally perform whatever other actions it deems necessary or

appropriate in the receipt, investigation, handling, and/or disposition of complaints or information concerning possible violations of the law or rules.

C. The board, investigator, and/or CRC shall conduct such investigation or make whatever other inquiry deemed appropriate to determine whether the matter should be dismissed or pursued further. To assist in the investigation, the board may issue, as necessary, such subpoenas as may be required to obtain documents and compel the appearance of witnesses.

D. The executive director may, but shall not be required, to provide written notice to the respondent that an investigation has been initiated. In determining whether to provide notice to the respondent, the director shall consider whether such notice may prejudice the investigation. Any notice shall describe the nature or basis of the complaint or the other information giving rise to the investigation, contain a preliminary statement of the possible violations of law or rules that may be involved, and provide the respondent with an opportunity to respond in writing and provide information relating to the investigation.

E. The executive director will provide a copy of the complaint to the respondent. The executive director will normally provide the complaint immediately, unless in the judgment of the executive director, the board or the CRC doing so may prejudice the investigation. In determining whether providing a complaint to the respondent immediately may prejudice the investigation, the executive director may consult with the president and/or the CRC. The respondent shall be allowed a reasonable opportunity to respond in writing to the complaint and provide whatever information that the respondent would like the board to consider.

F. The board may at any time dispose of any complaint or other matter informally. Such informal resolution may take the form of any informal disposition recognized in R.S. 49:955(D) or any other form of agreement or disposition which adequately addresses the complaint or the matter under investigation.

G. For the purpose of resolving a complaint or other matter without a full board hearing, the board, CRC, or the respondent may suggest that an informal conference be held. If the board or the CRC suggests such a conference, attendance by the respondent at this conference shall be purely voluntary, and no inferences or negative presumptions shall result if a respondent declines to attend or otherwise participate in such a conference.

H. The persons who will normally attend an informal conference are one or both of the board members comprising the CRC, the executive director, the board attorney, and the respondent. The CRC may request that other persons, such as the investigator, also attend, if such attendance would facilitate the discussion and potentially resolve the complaint or other matter at issue. The respondent may bring his or her attorney to the conference, although such legal representation is not necessary.

I. At the start of an informal conference, the CRC, executive director, or board attorney will explain the purpose of the informal conference; discuss the specific charges that may be presented to the board if it becomes necessary to schedule a formal hearing; and present some or all of the evidence that the board might introduce at a formal hearing

to substantiate the charges. The respondent will be provided an opportunity to discuss the board's evidence, present his or her own evidence, and show that no violation of the law or rules has occurred. Statements made at the informal conference may not be introduced at a formal hearing unless all parties consent. No transcript of the informal conference will be made.

J. The respondent has the right to terminate an informal conference at any time and to request a formal hearing called for the purpose of adjudicating any alleged violation of the law or rules.

K. If at the end of the informal conference it appears that no violation of the law or the rules has occurred, no further action will be taken, and the CRC will recommend to the board that the complaint be dismissed or, if no complaint has been filed, that no further action be taken concerning the matter being considered.

L. If at the end of the informal conference it appears that a violation may propose of the law or the rules has occurred, the CRC a stipulation, settlement agreement, or consent order to the respondent. If the proposal for resolving the matter is agreeable to the respondent, the CRC will then submit the proposed stipulation, settlement agreement, or consent order to the board and recommend that the board accept its recommendation.

M. If the respondent does not consent to the proposal made by the CRC for resolving the matter at the end of the informal conference, the CRC will advise the board that an informal conference was unsuccessful in resolving the matter and that the complaint, if one has been filed, may be scheduled for a formal hearing. If no complaint has been filed, the CRC will advise the respondent of whatever action it intends to take concerning the matter being considered. The CRC may file its own complaint against the respondent and, if so, that complaint may be scheduled for a formal hearing before the full board.

N. The CRC will present and explain its recommendations for the proposed stipulation, settlement agreement, or consent order at a board meeting. The members of the CRC may vote on whether the recommendations should be accepted by the board. If CRC's recommendations are not accepted by the board, the members of the CRC will not be allowed to deliberate concerning or vote on anything further concerning the matter which the CRC has considered.

O. The board may accept or reject the recommendations proposed by the CRC. If the recommendations are accepted by the board, the recommendations will be reduced to writing, signed by the board president and the respondent, and entered as a stipulation, written settlement, or consent order by the board. No further disciplinary action on the matters covered may be undertaken by the board.

P. If CRC's recommendations are not accepted by the board, the board may schedule the complaint for a full hearing or take whatever other action it deems appropriate.

Q. The results of any proposed informal disposition (stipulation, agreed settlement, or consent order recommended by the CRC) or formal disposition (stipulation, agreed settlement, or consent order entered as a result of a hearing) are public information. Formal dispositions are published in the board newsletter and sent to the NCARB.

R. Hearings before the board shall be in accordance with R.S. 37:141 et seq. and the Administrative Procedure Act, R.S. 49:951 et seq.

S. The board may obtain the services of a reporter to make a record of the hearing. The respondent may contact the executive director to determine whether a reporter will be provided by the board.

T. In all cases the board's executive director stands instructed to support and cooperate with counsel and the courts in any manner possible, and to keep the board advised of relevant matters as the case develops.

U. In the board office there shall be maintained a current file of all complaints alleging violations, reflecting all information and action pertinent thereto.

V. Upon its own motion, the board may reopen any such case on record and direct a reinvestigation of the respondent's actions subsequent to resolution to the original complaint.

AUTHORITY NOTE: Promulgated and amended in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:575 (April 2003), amended LR 30:2469 (November 2004).

Mary "Teeny" Simmons  
Executive Director

0411#026

## RULE

### Office of the Governor Board of Examiners for New Orleans and Baton Rouge Steamship Pilots

General Provisions; Qualifications and Examination;  
Standards of Conduct; Investigations and Enforcement  
(LAC 46:LXX.Chapters 61, 64, 66, and 67)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River (hereinafter "board") it has adopted Rules and Regulations. Chapter 61 regarding the general operation of the board of examiners is intended to replace the former Chapter 61, which was entitled New Orleans and Baton Rouge Port Pilots. Chapter 64 pertains to the general qualifications necessary to become an apprentice candidate and the examination of pilots. Chapter 66 outlines standards of conduct, standards of proper and safe pilotage, standards of competency and recency of service, along with continuing education requirements. Chapter 67 establishes procedures for the investigation and enforcement of board rules, together with penalties associated therewith.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXX. Pilots

### Subpart 7. Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots

#### Chapter 61. General Provisions

##### §6101. Authority

A. As mandated by R.S. 34:1041, these Rules and Regulations are issued by the Board of Examiners for New

Orleans and Baton Rouge Steamship Pilots in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., for the purpose of adopting Rules, regulations and requirements regarding the general operation of the board of examiners.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004).

##### §6103. Definitions

*Association or Pilot Association* The New Orleans-Baton Rouge Steamship Pilots Association.

*Board of Examiners or Board* The Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, as designated in R.S. 34:1042.

*Examiner(s)* Those individuals appointed, as per law, to be members of the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots.

*Pilot(s)* New Orleans and Baton Rouge Steamship Pilot(s), as designated in R.S. 34:1043.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004).

##### §6104. Appointment

A. When there is a need for new examiners, the board of examiners shall make recommendations to the governor for replacement(s) to fill any vacancies.

B. When this need arises, the board of examiners shall take into consideration the following in making their recommendations:

1. ability to serve;
2. qualification;
3. length of service as a commissioned pilot.

C. Examiners in the performance of their statutory duties have the exclusive and complete authority to determine their work schedule. Further, Examiners shall not suffer any loss of benefits or compensation while they are performing their duties.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004).

##### §6105. Expenses

A. All ordinary and necessary operating and administrative costs and expenses of the board of examiners, including, but not limited to, the cost of administrative offices, furniture and fixtures, communications, transportation, office supplies and equipment, publications, travel, examiners' reimbursement, attorney fees, expert fees, costs, expenses of litigation or any other expenses whatsoever incurred by the commission while performing its duties shall be provided by the pilots and paid through their pilot association.

B. The examiners shall maintain an office and conduct business as is necessary to fulfill its legislative mandate and/or as may be required by the rules herein.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004).

#### **§6106. Rules, Records, Meetings, Application**

A. All board rules must be adopted by a majority of the Examiners. The board of examiners shall maintain records in accordance with R.S. 44:1 et seq., and all other state laws. The board of examiners shall file an annual report of investigations, findings, actions and accident data in accordance with state laws. The board of examiners shall conduct its meeting in accordance with R.S. 42:4.1 et seq., and any other state laws.

B. The examiners shall hold quarterly meetings on the call of the president. The president has the prerogative of calling additional meetings as needed to conduct business upon giving proper notice, as required by law.

C. These Rules shall apply to all New Orleans and Baton Rouge steamship pilots engaged in their calling within the operating territory defined in R.S. 34:1043.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004).

#### **§6107. Association of Pilots**

A. The pilots may form themselves into an association or associations, as they see fit, not in conflict with the rules and regulations of the board of examiners.

B. The formation of any association incorporated or non-incorporated which is for the purpose of providing pilotage service under the law, including but not limited to R.S. 34:1047, must be submitted to the commission for approval. Such applications must meet all legal requirements, provide for a stable pilotage system, serve the best interest of the majority of pilots and protect the life and property of the region.

C. The board of examiners hereby recognizes the fact that the New Orleans and Baton Rouge steamship pilots have formed themselves into a legal registered corporation known as the New Orleans and Baton Rouge Steamship Pilots Association; further, let it be recognized by the board of examiners that the said pilot association has operated, and is now operating, within all state laws and is not known to be in conflict with the Rules and Regulations of the board of examiners.

D. No pilot association, incorporated or non-incorporated, has any authority to impose or legislate any Rules, bylaws or charter provisions affecting the board of examiners; further, any attempt to exercise any authority over or affecting the board of examiners is a violation of these Rules.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004).

#### **§6108. Severability**

A. It is understood that any provision and/or requirement herein that is deemed invalid or unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004).

#### **Chapter 64. Qualifications and Examination of Pilots**

##### **§6401. Statement of Purpose**

A. The purposes of these Rules and Regulations is to establish standards for recommendation by the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots to the governor of the state of Louisiana for appointment as a New Orleans-Baton Rouge steamship pilot, pursuant to R.S. 34:1043.

B. The Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots is charged by the Louisiana Legislature with the responsibility of promoting and maintaining safety of maritime commerce along the Mississippi River. To this end, the board of examiners has set the requisite qualifications to become a NOBRA pilot at a high level, in order to attract applicants who have earned, among other qualifications, a maritime degree. The maritime related degree is of special importance to the pilot in that it imparts necessary knowledge in this highly specialized field and is a required supplement for the non-maritime related bachelor's degree. It is the opinion of the board that this combination of education, licensing and experience will foster the type of conscientious pilots who will conduct themselves in a professional manner and continue the excellent tradition of safety set by NORA pilots.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004).

##### **§6403. Authority**

A. As mandated by R.S. 34:1041, these Rules and Regulations are issued by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., for the purpose of adopting Rules, regulations and requirements regarding the general qualifications and examination of pilots.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004).

##### **§6407. Definitions**

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

*Accredited Institution of Higher Learning* Can institution that is accredited by the Commission of Colleges of the Southern Association of Colleges and Schools, the Louisiana Community and Technical College System, or is part of the Louisiana State University System or one whose credits are honored by any of these systems.

*Administrative Procedure Act (APA)* The Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

*Applicant/Candidate* Any person who has submitted an application for a pilot commission as a New Orleans - Baton Rouge Steamship Pilot.

*Application* The written application supplied by the board of examiners to an applicant who desires to become a

state commissioned New Orleans - Baton Rouge Steamship Pilot, along with all supporting documentation.

**Apprentice** Any person duly elected by the members of the NOBRA Association, but not yet commissioned, who is serving in an orientation program, as directed by the board of examiners.

**Apprenticeship Program** A period of orientation performed by an apprentice and/or restricted pilot, in order to become an unrestricted pilot, as set forth by the board of examiners.

**Association** or **NOBRA** New Orleans-Baton Rouge Steamship Pilot Association.

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

**Experience on a License** Experience on a vessel of at least 50 gross tons with any USCG Merchant Marine Deck Officer license of 1600 Ton Master of Inland or Rivers, First Class pilot license or equivalent, where performance of duties encumbers the license. One year experience is calculated as being at least 150 days of service on vessels underway in a 365-day period.

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

**Maritime Studies** An accredited course of study resulting in a degree offered by certain Colleges in the Louisiana State University and Community and Technical College Systems, which includes nautical science, marine operations or other similar courses of study involving marine navigation. A comparable degree from an accredited institution of higher learning is also acceptable.

**NOBRA Pilot** or **Pilot** A state commissioned New Orleans-Baton Rouge Steamship pilot, as designated in R.S. 34:1041, et seq.

**Restricted Pilot** A state commissioned pilot who is subject to restricted service, under the supervision of the board of examiners.

**Restricted Service** A period of time set by the board of examiners during which a restricted pilot performs limited job assignments and fulfills other requirements, as enumerated by the board, until such time as the restricted pilot has exhibited sufficient knowledge and expertise.

**Unrestricted Pilot** A state commissioned pilot who has successfully completed the apprenticeship program and restricted period.

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

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004).

#### **§6409. Application**

A. Any person wishing to submit an application to become an apprentice candidate may obtain an application from the office of the board of examiners, said person may request an application by mail or may download an application from the board of examiners' website. The board of examiners current address is:

Board of Examiners for New Orleans and Baton Rouge  
Steamship Pilots  
3900 River Road, Suite 5  
Jefferson, Louisiana 70121  
(504) 832-8943  
www.nobraexaminers.louisiana.gov

B. All applications must be in writing, must be signed by the applicant and presented to a member of the board of examiners. All persons wishing to submit an application may make an appointment with an examiner by calling the board's office. All applications must be accompanied by satisfactory evidence of compliance with the board's requirements. Upon submission of an application, all applicants will receive a stamped copy of their application indicating the date of submission.

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

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004).

#### **§6411. General Requirements**

A. Applicant must be of good moral character. In addition, all applicants will be required to submit to a criminal background check conducted at the Louisiana State Police headquarters.

B. Applicant must have been a registered voter of the State of Louisiana for at least one year prior to submitting an application to become an apprentice candidate.

C. All applicants must submit proof of a current satisfactory United States Coast Guard approved physical.

D. Applicant must submit evidence of satisfactory completion from United States Coast Guard approved training programs for the following courses of instruction within five years prior to a NOBRA apprentice election:

1. Bridge Resource Management;
2. Basic Ship Handling (5 day);
3. Radar Observer;
4. Advanced firefighting;
5. CPR, as approved by the American Red Cross

E. All applicants must submit certification that they have passed a DOT approved drug screen test within six months prior to a NORA apprentice election. An applicant may satisfy this requirement by submission of proof that the applicant is currently employed by an employer who administers a DOT approved random drug testing program and that applicant is subject to random testing.

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

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004).

#### **§6413. Licenses/Education/Experience**

A. In addition to the above, all applicants must submit proof of satisfaction of the following licensing, education and experience criteria.

1. All applicants must hold at least a current First Class Pilots License, Any Gross Tons, Upon the Lower Mississippi River from Chalmette, Louisiana to Baton Rouge Railroad and Highway Bridge at Baton Rouge, Louisiana, including physical, and, at least, either a Master of Inland Steam or Motor Vessel of not more than 1600 Gross Tons or Master of Rivers Steam or Motor Vessel of not more than 1600 Gross Tons or a Third Mate Oceans any Gross Tons license.

2. Additionally, all Applicants must hold a degree from an accredited institution of higher learning, as well as maritime experience and current, valid licenses as follows:

a. A graduate of a maritime academy and at least a Third Mate Oceans any Gross Tons license with three years



experience on a license or a Second Mate Oceans any Gross Tons license with one year experience on a license or a Chief Mate or Master Oceans any Gross Tons license; or

b. A bachelors degree in maritime studies or a related maritime field and at least a Master of Inland Steam or Motor Vessel of not more than 1600 Gross Tons or Master of Rivers Steam or Motor Vessel of not more than 1600 Gross Tons with 3 years experience on a license or a Third Mate Oceans any Gross Tons license with 3 years experience on a license or a Second Mate Oceans any Gross Tons license with 1 year experience on a license or a Chief Mate or Master Oceans any Gross Tons license; or

c. A bachelors degree in a non-maritime field and 15 credit hours of additional accredited maritime courses and at least a Master of Inland Steam or Motor Vessel of not more than 1600 Gross Tons or Master of Rivers Steam or Motor Vessel of not more than 1600 Gross Tons with 2 years experience on a license; or

d. An associate degree in maritime studies or a related maritime field and at least a Master of Inland Steam or Motor Vessel of not more than 1600 Gross Tons or Master of Rivers Steam or Motor Vessel of not more than 1600 Gross Tons with 6 years experience on a license.

3. Effective January 1, 2014, all applicants must hold a minimum of a bachelor degree in maritime studies or a bachelor degree in a non-maritime field as well as an associate degree in maritime studies.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004).

#### **§6415. Application Screening**

A. At least 120 days prior to an apprentice election, NOBRA must inform the board of examiners, in writing, that an election will be held and the date of the election.

B. At least 100 days prior to the NOBRA apprentice election, the board of examiners will advertise the date of the NOBRA apprentice election, as well as the deadline for submission of application materials, in at least 2 periodicals, one of which shall have a circulation of the greater New Orleans area and one of which shall have a circulation of the greater Baton Rouge area. The advertisements shall run for at least 10 days during a 3-week period. In addition, all relevant dates will be posted on the board of examiners website.

C. At least 75 days prior to the NOBRA apprentice election, the board of examiners will give notice, via U.S. Mail, to all applicants of the date of the election and the deadline for submitting documentation in support of their application. Further, this notice will also contain a list of any deficiencies in the applicant's application.

D. The deadline for submitting an application, and supporting documentation, for a particular NOBRA apprentice election shall be 45 days prior to the NOBRA apprentice election.

E. At least 30 days prior to the NOBRA apprentice election, the board of examiners will forward to NOBRA the applications, and supporting documentation, of all applicants who meet the criteria for election, as enumerated in the board's rules.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004).

#### **§6416. Expiration**

A. Following a NORA Apprentice election, all applications on file with the board of examiners will be deemed expired and will be discarded. Any person wishing to apply for a subsequent NORA apprentice election will be required to submit a new application, along with supporting documentation.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004).

#### **§6417. Apprenticeship**

A. All apprentices must successfully complete an apprenticeship program designed and administered by the board of examiners. The apprenticeship shall be over the NOBRA route and last for a period of not less than three years. This apprentice program shall include the following:

1. not less than one year of orientation, prior to commissioning, during which the apprentice accompanies state commissioned pilots on their duties;

2. not less than two years of restrictive service, following commissioning, during which the restricted pilot shall be observed, from time to time by unrestricted pilots;

3. advanced qualification testing;

4. any necessary license preparation and upgrades;

5. any other industry related professional development that the board of examiners may deem relevant and necessary.

B. The orientation period may be extended up to one additional year as determined by the board of examiners. If, after the one year extension period, the apprentice fails to meet the criteria and standards set by the board, said apprentice shall be released from the apprenticeship program and will not be recommended to the governor for commissioning as a pilot. Grounds for release from the apprenticeship program include, but are not limited to:

1. recklessness and/or display of lack of judgment;

2. disregard of state rules, laws, and regulations;

3. disregard of United States Coast Guard rules and regulations;

4. lack of fitness for the position and job of pilot;

5. lack of moral integrity, veracity, ability or capability.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004).

#### **§6419. Examination by the Board of Examiners; Recommendation to Governor**

A. In addition to the above requirement, in order to be recommended to the governor for commissioning as a pilot, all apprentices must complete an oral and/or written examination to be conducted by the board of examiners. This examination shall test the apprentice's knowledge of pilotage and demonstrate the apprentice's proficiency and capability to serve as a commissioned pilot.

B. The board of examiners shall certify to the governor for his/her consideration for commissioning as a NOBRA

pilot those apprentices who satisfactorily complete all requirements established by state law and these rules and who complete and pass the examination(s) given by the board of examiners.

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

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004).

#### **§6420. Restrictive Service Period**

A. The restrictive service period shall be at least two years in duration, during which the restricted pilot will only be assigned to vessels of limited size and draft, to be set and determined by the board of examiners. After each eight-month period, the restricted pilot may graduate to piloting larger size and draft vessels, all to be determined by the board of examiners.

B. The restricted service period may be extended up to one additional year as determined by the board of examiners. If, after the one year extension period, the restricted pilot fails to meet the criteria and standards set by the board, said restricted pilot shall be released from the apprenticeship program and a recommendation will be made to the governor to have the restricted pilot's state commission revoked.

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

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004).

### **Chapter 66. Standards of Conduct**

#### **§6601. Purpose/Statement of Policy**

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, this board has always had a strong commitment to the general public and maritime industry, including but not limited to apprentices, candidates and the pilot members of NOBRA, to provide a safe work place and to establish programs promoting the highest standards of pilot health, safety and welfare. In accordance with state law, and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the board proposes to adopt the following rules.

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

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004).

#### **§6603. Application**

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

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

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004).

#### **§6607. Authority**

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

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

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004).

#### **§6609. Definitions**

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

**Administrative Procedure Act (APA)** The Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

**Applicant/Candidate** Any person who has submitted an application for a pilot commission as a New Orleans-Baton Rouge Steamship Pilot.

**Application** The written application supplied by the board of examiners to an applicant who desires to become a state commissioned New Orleans-Baton Rouge Steamship Pilot, along with all supporting documentation.

**Apprentice** Any person duly elected by the members of the NOBRA Association, but not yet commissioned, who is serving in an orientation program, as directed by the board of examiners.

**Association or NOBRA** New Orleans-Baton Rouge Steamship Pilot Association.

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

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

**NOBRA Pilot or Pilot** A New Orleans-Baton Rouge Steamship pilot, as designated in R.S. 34:1041 et seq.

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

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

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

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

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004).

#### **§6611. Severability**

A. If any provision of these Rules and Regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without

the invalid provision or application, and to this end, provisions of these Rules and Regulations are declared to be severable.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004).

#### **§6615. Violations of the Policy**

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004).

#### **§6617. Standards of Conduct for Proper and Safe Pilotage**

A. This board may in its discretion recommend to the Office of the Governor of Louisiana reprimand revocation and/or suspension of a NOBRA pilot, apprentice, and/or candidate for the following non-exclusive list of particulars:

1. failure to maintain, in good, valid and current standing a U.S. Coast Guard First Class Pilot License of any gross tons from Chalmette, Louisiana to Baton Rouge Railroad and Highway Bridge at Baton Rouge, Louisiana
2. conviction of any felony from any jurisdiction whatsoever;
3. neglect of duty;
4. neglect of duty while performing services at VTC (Vessel Traffic Center) or other similar governmental facility;
5. failure to remain a qualified and registered voter of the state of Louisiana;
6. not successfully passing any physical examination as mandated by the Board of Examiners;
7. any violation of the board's drug and alcohol rules and regulations;
8. failure to successfully complete continuing professional education requirements;
9. any violation of these Rules.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004).

#### **§6623. Absolute Insurer**

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004).

#### **§6625. Adoption of Navigational Rules**

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004).

#### **§6627. Duty of a Pilot**

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004).

#### **§6629. Pilot's Duty to Remain on Duty at the Vessel Traffic Center (VTC)**

A. A NOBRA pilot shall remain on site and on duty at VTC (or similar facility) until properly relieved and shall adhere to normal watchkeeping practices of a prudent seaman.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004).

#### **§6647. Recency Requirement**

A. If an otherwise state-commissioned NOBRA pilot does not pilot or has not piloted a vessel or ship, as assigned by the NOBRA Pilot Association during the normal course of dispatching of pilotage services, on a turn for a distance of at least 20 miles, during any period of 6 consecutive months, then before that pilot is eligible and authorized to pilot any such vessel along the NOBRA route, said pilot shall be required to successfully complete, to the exclusive and unilateral satisfaction of the Board, each of the following non-exclusive list of particulars:

1. A minimum of 5 turns along the NOBRA route, with a commissioned NOBRA pilot, from the general area of the Baton Rouge harbor to New Orleans General Anchorage:
  - a. these 5 turns, combined, shall cover the entire area between Baton Rouge Harbor and New Orleans General Anchorage;
  - b. two (2) trips of these five (5) trips shall be during the hours of darkness.

B. Where there has been no pilotage in excess of seven months, a NOBRA pilot shall be subject to and shall be required to successfully complete, to the exclusive and unilateral satisfaction of the board, a specially designed and planned program to reasonably re-orient such pilot to Mississippi River pilotage, under the jurisdiction and supervision of this board.

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004).

#### **§6649. Re-Orientation Period**

A. Upon commencement of the above re-orientation period, any pilot subject to these minimum requirements shall successfully complete all 5 turns within 30 consecutive days. For good reason shown, and upon timely application,

in writing by the pilot, additional time to complete these trips or turns may be granted by the board. The board shall have the exclusive and unilateral discretion to grant or deny any extension of time.

B. The board of examiners reserves the right to require a pilot to successfully pass a physical approved by the Board of Examiners prior to returning to duty.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004).

#### **§6651. Continuing Professional Education**

A.1. As of January 2, 2005, every pilot seeking to maintain a pilot's commission must successfully complete the following required courses every five years:

- a. an approved Bridge Resource Management course for pilots;
- b. an approved Emergency Ship Handling course for pilots;
- c. a marine technical course, which includes Vessel Traffic Service training.

2. Every pilot must annually and successfully complete 24 hours of professional development courses approved by the board of examiners. The board may, from time to time, adjust these requirements in order to maintain the highest level of professional competency and pilot safety.

B. All professional education classes and programs shall be approved by the board of examiners. The board of examiners will maintain a non-exclusive list of approved professional education classes and programs, which may be periodically updated.

C. Any pilot who fails to successfully complete the required professional education classes or programs will be removed from duty until the pilot complies with the requirements of this section.

D. It is the responsibility of the pilot to attend the necessary professional education classes and to present the board with proof of satisfactory completion.

E. The board may, for good cause shown, grant a waiver or extend the time for a pilot to complete the continuing professional education requirement, upon timely application, in writing, by the pilot.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004).

### **Chapter 67. Investigations and Enforcement**

#### **§6701. Purpose/Statement of Policy**

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, this board has always had a strong commitment to provide a safe work place and to establish programs promoting the highest standards of pilot health, safety and welfare. In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the board will maintain and enforce a strict policy of conducting full and complete investigations, and possible subsequent referrals to the Office of the Governor, of any and all violations of board Rules and state and/or federal law.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004).

#### **§6703. Authority**

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004).

#### **§6705. Severability**

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004).

#### **§6707. Duty to Report**

A. In any case, where a vessel under pilotage shall go aground, or shall collide with any other object, or shall meet with any casualty, or be injured or damaged in any way, the board of examiners shall conduct an appropriate investigation, as per these Rules. Following such an incident, the pilot shall report the matter as follows:

1. report the casualty by whatever means available to the board of examiners as soon as practical;
2. be available for interview by the board and furnish complete details of the casualty;
3. make a written report to the board of examiners as soon as practical, but no later than 30 days following the incident.

B. Any pilot who neglects or refuses to make a written report to the board as required by these Rules, shall be reported to the governor for possible disciplinary action.

C. Any pilot requested or summoned to testify before the board of examiners shall appear in accordance with said request or summons and answer any questions related to or in any way connected with the pilot's service. The pilot has right to legal counsel at this meeting.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004).

#### **§6709. Removal from Duty**

A. When any Examiner has reason to believe that the conduct or actions of a pilot is creating a dangerous or unsafe condition that may jeopardize the interests, safety, health or welfare of fellow pilots, vessels, cargo, property or individuals, the Examiner may immediately relieve that pilot from pilotage duty, without the necessity of formal notice

and hearing, in order to protect the interests of the State of Louisiana. However, at the earliest possible time, the board of examiners must conduct an investigation of the pilot's conduct, as per these Rules, and conduct any necessary hearings in order to protect the due process and equal protection requirements afforded the pilot by the Louisiana and United States constitutions.

B. When any examiner has reason to believe that a pilot is or may be under the influence of alcohol, drugs or any other stimulant or depressant that may effect the pilot's ability to perform his/her duties, the examiner may immediately relieve that pilot from pilotage duty, without the necessity of formal notice and hearing, in order to protect the interests of the state of Louisiana. However, at the earliest possible time, the board of examiners must conduct an investigation of the pilot's conduct, as per these Rules, and conduct any necessary hearings in order to protect the due process and equal protection requirements afforded the pilot by the Louisiana and United States constitutions.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004).

#### **§6711. Investigations and Enforcement**

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

1. any complaint involving a NOBRA pilot.

B. The board shall investigate or appoint an investigating officer to conduct a preliminary investigation of the complaint and report their findings to the board.

C. Following the preliminary investigation, the board shall determine whether the complaint is sufficient to justify further proceedings or may dismiss the complaint.

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

E. Following the full investigation, the investigating officer shall make a report to the board, who, in its exclusive discretion, shall determine whether the complaint is sufficient to justify further proceedings or may dismiss the complaint.

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

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

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

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

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

J. All investigations and hearings undertaken as authorized herein above, shall be conducted pursuant to the Administrative Procedure Act, R.S. 49:950 et seq. If any specific provision of this section in any way conflicts with the more general rule of the Administrative Procedure Act, the more specific rule of this section shall govern.

K. Any pre-hearing motion shall be considered by the entire board.

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

M. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

N. Unless otherwise requested by the respondent/pilot, adjudication hearings, shall be conducted in open session, unless the respondent/pilot expressly requests that the matter be conducted in executive session, all as per law.

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

P. Unless stipulation is made between the parties, and approved by the board, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings. Witness fees (expert or otherwise) and related hearing costs caused by the respondent/pilot shall be his/her responsibility; in no way

whatsoever shall the board be liable for nor responsible for costs or fees incurred by the respondent/pilot.

Q. During evidentiary hearing, the Board shall rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire panel in or out of executive session, all as per law. At any such hearing, the board may be assisted by legal counsel, who is independent of the prosecutor and who has not participated in the investigation or prosecution of the case.

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

1. the administrative notice, notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery, and all pleadings, motions, and intermediate rulings;
2. evidence received or considered at the hearing;
3. a statement of matters officially noticed except those so obvious that statement of them would serve no useful purpose;
4. offers of proof, objections, and rulings thereon;
5. proposed findings and exceptions, if any;
6. the decision, opinion, report or other disposition of the case made by the board;
7. findings of fact;
8. conclusions of law.

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

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

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

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

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

2. Upon issuance of a final decision, a copy thereof shall promptly be served upon all parties of record, or upon

respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of administrative notices.

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2478 (November 2004).

### **§6713. Recusal**

A. No member of the board of examiners shall participate in the investigation of or vote on any matter to which he/she is a party to or in which he/she has a conflict of interest. In such cases, he/she shall automatically be recused from participating in or voting on such matters.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2479 (November 2004).

Henry G. Shows  
President

0411#052

### **RULE**

#### **Office of the Governor Office of Financial Institutions**

##### **Limitations on Investments in Premises and Fixed Assets (LAC 10:I.1101)**

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 6:121(B)(1), 6:646(A)(1)(a), and 6:822(3)(e), the Commissioner of the Office of Financial Institutions

promulgates a Rule providing for limitations on investments in premises and fixed assets held by a bank, savings bank, savings and loan association, or credit union.

#### **Title 10**

### **FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC**

#### **Part I. Financial Institutions**

#### **Chapter 11. Premises**

#### **§1101. Holding of Property for Premises Purposes**

##### **A. Definitions**

*New Institution* Any bank, savings bank, savings and loan association, or credit union that has been chartered by this office for less than three years.

*Premises and Fixed Assets* The net book value of all land, buildings, leasehold improvements, and furniture, fixtures, and equipment used by the institution to conduct its business or held for future expansion. Additionally, this amount shall include any assets related to a capital lease and shall not include other real estate owned.

*Tier 1 Capital* As defined in Part 325 of the Federal Deposit Insurance Corporation's Rules and Regulations for banks and savings banks and Part 567 of the Office of Thrift Supervision's Rules and Regulations for savings and loan associations.

*Net Worth* As defined in Section 702.2(f) of the National Credit Union Administration's rules and regulations for credit unions.

##### **B. Limitation**

1. Without the prior approval of the commissioner, no bank, savings bank, or savings and loan association shall invest more than 50 percent of its tier 1 capital plus the allowance for loan and lease losses in premises and fixed assets, and no credit union shall invest more than 50 percent of its net worth plus the allowance for loan and lease losses. For new institutions, the limitation shall be 45 percent.

**AUTHORITY NOTE:** Promulgated in accordance with R. S. 6:121(B)(1), 6:646(A)(1)(a) and 6:822(3)(e).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2480 (November 2004).

John Ducrest, CPA  
Commissioner

0411#043

#### **RULE**

#### **Office of the Governor**

#### **Recreational and Used Motor Vehicle Commission**

Licensure; Rent with Option-to-Purchase Program;  
Repossession; Marine Products; Marine Surveyor  
(LAC 46:V.2905, 3001, 3003, 3005, 3101,  
3303, 3503, 4801, 4803, and 4901)

In accordance with the provisions of the administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapters 4A and 4B, the Office of the Governor, Recreational and Used Motor Vehicle Commission, the Recreational and Used Motor Vehicle Commission has amended Rules and Regulations governing Qualifications and Eligibility for Licensure in accordance with R.S. 32:772 (F)(2), R.S. 32:774, R.S. 32:752, R.S.

32:754 and R.S. 32:762; has repealed Rules and Regulations governing Rent With Option-to-Purchase Program; has repealed Provisions Required in all Rental Purchase Agreements in accordance with R.S. 32:773.B; and has repealed Rules and Regulations governing Repossession of Vehicles in accordance with R.S. 32:772E, has amended Automotive Dismantler and Recycler in accordance with R.S. 32:773, and R.S. 32:771(2)(a)(i) and (ii), R.S. 32:773.2.D; and has adopted Rules and Regulations governing Designation of Area of Responsibility for Marine Products and Independent Marine Surveyor in accordance with R.S. 32:773.1 and R.S. 32:773.2.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part V. Automotive Industry**

#### **Subpart 2. Recreational and Used Motor Vehicle Commission**

#### **Chapter 29. Used Motor Vehicle Dealer**

#### **§2905. Qualifications and Eligibility for Licensure**

A. - A.3. ...

B. A dealer's license shall consist of a signed certificate bearing the official seal of the commission and the name and address of the dealership and assigned a dealer number, which shall be posted in a conspicuous place in the dealer's place or places of business. The dealer's license number will be prefixed with UD, followed by an electronic number.

C - D. ...

E. Dealers in new and used motor homes, new and used boats, new and used boat motors, new and used motorcycles, new and used all-terrain vehicles, new and used semi-trailers, new and used recreational trailers, new and used boat trailers, and new and used travel trailers, likewise must meet the above qualifications to be eligible and all these types license numbers will be prefixed by NM, followed by an electronic number. Semi-trailers are described in the title law as every single vehicle motive power designed for carrying property and passengers and so designed in conjunction and used with a motor vehicle that some part of its own weight and that of its own load rests or is carried by another vehicle and having one or more load carrying axles. This includes, of course, recreational trailers, boat trailers and travel trailers, but excludes mobile homes. One license shall be due for new and used operators at the same location.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:772(F)(2).

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission LR 15:258 (April 1989), LR 15:375 (May 1989), LR 24:1682 (September 1998), LR 25:245 (February 1999), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR:30:436 (March 2004), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2480 (November 2004).

#### **Chapter 30. Rent With Option-to-Purchase Program**

#### **§3001. Definitions**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:773.B.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:1587 (July 2002), repealed by the Office of the Governor, Recreational

and Used Motor Vehicle Commission, LR 30:2480 (November 2004).

### **§3003. Provisions Required in all Rental Purchase**

#### **Agreements**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773.B.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:1587 (July 2002), repealed by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004).

### **§3005. Repossession of Vehicles**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 29:703 (May 2003), repealed by the Office of the Governor, Recreational and Used Motor Vehicle Commission LR 30:2481 (November 2004).

## **Chapter 31. License for Salesman**

### **§3101. Qualifications and Eligibility for Licensure**

A. - A.2 ...

B. A salesman's license shall consist of an identification card bearing the name, address, name of employer, date, signature of the executive director, salesman's license number prefixed with SM, followed by an electronic number. The card shall be carried upon his person at all times when acting as a salesman at license location.

C - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 25:245 (February 1999), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission LR 30:2481 (November 2004).

## **Chapter 33. Automotive Dismantler and Recycler**

### **§3303. Qualifications and Eligibility for Licensure**

A. - A.2 ...

B. An automotive dismantler's license shall consist of a signed certificate bearing the official seal of the commission and the name and address of the business and assigned a dismantler number, which shall be posted in a conspicuous place in the dismantler's place or places of business. The automotive dismantler's license number will be prefixed with AD, followed by an electronic number.

C. ...

D. An automotive dismantler and parts recycler may offer a rebuilt wrecked, abandoned or repairable motor vehicle at wholesale only. If such vehicle is offered for sale at retail, the dismantler will be operating as a used motor vehicle dealer and is subject to licensing requirements and used motor vehicle dealer rules and regulations thereof. However, an automotive dismantler and parts recycler, duly licensed by the commission, shall have the authority to transfer the certificate of title as a dealer under the Louisiana Certificate of Title Law, (i.e., transfer to another dealer without payment of tax). In order to sell a vehicle at retail, an automotive dismantler and parts recycler must be licensed hereunder as a used motor vehicle dealer providing a good and sufficient bond, executed by the applicant as principal

by a surety company qualified to do business as surety in the sum of \$20,000.00.

E. ...

F. No person, firm or corporation may advertise, sell or display for sale used parts without first obtaining a used parts dealer's license to do business in this state. All these types of license numbers will be prefixed by UP, followed by an electronic number.

F.1. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:752, 32:753, 32:754, 32:775 and 32:756, 32:772(E), and R.S. 32:773(A)(3).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1063 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 20:535 (May 1994), repromulgated LR 20:645 (June 1994), LR 24:1683 (September 1998), amended LR 25:245 (February 1999), amended by Office of the Governor, Recreational and Used Motor Vehicle Commission LR 30:2481 (November 2004).

### **§3503. Qualifications and Eligibility for Buyer Identification Card**

A. - A.2. ...

B. The buyer's identification card shall include the name, address, driver's license number, any one of the aforementioned dealers' license numbers, physical description, and signature of the applicant and the name and address of the employer of the applicant. The buyer's identification number to be prefixed with BI, followed by an electronic number. Cards obtained for the buyers will be \$25 each for Louisiana resident and \$200 each for out-of-state resident. Out of state buyers must provide proof that they are a licensed used motor vehicle dealer, auto recycler, auto dismantler or employee thereof. A duplicate identification card will be issued to all buyers that will consist of individual's name, driver's license number, social security number, dealership name, dealer number, salesman number, photograph and the individual's signature. This card must be carried with the individual and produced on demand while conducting the business for which this license has been issued. Applicants may provide a copy of the license. However, if the commission has reasonable cause to suspect that the copy is forgery or inaccurate, then the commission may require the applicant to produce a certified copy of the license.

C. - C.2 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:762.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:259 (April 1989), LR:1058 (December 1989), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 28:1588 (July 2002), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004).

## **Chapter 48. Designation of Area of Responsibility for Marine Products**

### **§4801. Procedure of Designation of Area of Responsibility**

A. Beginning August 16, 2004, the commission shall notify by certified mail each marine product manufacturer/distributor, who has prior to that date failed to



designate an area of responsibility for each of its existing dealers, that they must designate an area of responsibility for each dealer within thirty days following receipt of the notification. Failure to respond to the commission within 30 days shall constitute an absence of designation thereby mandating the areas of responsibility provided for in R.S. 32:771(2)(a)(i)(ii).

B. Following August 16, 2004, without such notification from the commission, each marine product manufacturer/distributor shall be responsible for designating an area of responsibility for any new dealer which has not had its area previously designated.

C. Thereafter, any marine product manufacturer/distributor which was not licensed with the commission prior to August 16, 2004, shall be notified by the commission by certified mail of their responsibility to designate an area of responsibility for their dealers. Failure to designate an area of responsibility for each dealer within 30 days following receipt of the notification shall constitute an absence of designation thereby mandating the area of responsibility provided for in R.S. 32:771(2)(a)(i) and (ii).

D. Any changes in the area of responsibility once designated must meet criteria as set forth in R.S. 32:773.2(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773.1 and R.S. 32:773.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2481 (November 2004).

#### **§4803. Uniform Procedures to Designate the Territory Assigned to a Marine Dealer**

A. On any occasion in which the marine product manufacturer/distributor has designated, an area of responsibility smaller in size to that provided for in R.S. 32:771(2)(a)(i) and (ii), the marine product manufacturer and/or distributor must furnish with the designation the uniform procedure to establish the community or territory that is assigned to a marine dealer. If the manufacturer/distributor fails to furnish a uniform procedure with its designation, the commission shall reject the designation and shall so notify the manufacturer/distributor of the rejection by certified mail. With the notice of rejection, the commission shall provide the manufacturer/distributor the opportunity to appeal the rejection to the commission in a hearing at the commission's monthly meeting.

B. Where the marine product manufacturer/distributor has provided the uniform procedure with its designation, the commission shall review the designation and advise the manufacturer/distributor within 10 days following receipt as to whether the designation has been accepted or rejected. If the designation has been rejected, the manufacturer/distributor shall be so notified by certified mail of the rejection and informed of the opportunity to appeal the rejection in a hearing at the commission's monthly meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773.1 and R.S. 32:773.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2482 (November 2004).

### **Chapter 49. Independent Marine Surveyor**

#### **§4901. Procedure for Appointing Independent Marine Surveyor**

A. When a marine product manufacturer/distributor elects to appoint an Independent Marine Surveyor to inspect the marine dealer's inventory to determine whether the product has been altered or damaged to the prejudice of the manufacturer/distributor, the manufacturer/distributor shall notify the commission of the identity of the Independent Marine Surveyor within 15 days prior to the hearing before the commission. However, the manufacturer/distributor may post the identity of any pre-approved Independent Marine Surveyor with the commission.

B. The notice of appointment of Independent Marine Surveyor or the approved list shall contain the resume curriculum vitae, or qualifications of Independent Marine Surveyor.

C. The commission shall then promptly notify the dealer of the identity of the Independent Marine Surveyor as selected by the manufacturer/distributor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:771.

HISTORICAL NOTE: Promulgated by Office of the Governor, Recreational and Used Motor Vehicle Commission LR 30:2482 (November 2004).

John M. Torrance  
Executive Director

0411#034

#### **RULE**

#### **Department of Health and Hospitals Board of Nursing**

Hepatitis B Virus (HBV) Hepatitis C Virus (HCV)  
and Human Immunodeficiency Virus (HIV)  
(LAC 46:XLVII.Chapter 40)

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 adopts rules amending the Professional and Occupational Standards pertaining to the Prevention of Transmission of Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human Immunodeficiency Virus (HIV). The Rules are set forth below.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLVII. Nurses**

#### **Subpart 2. Registered Nurses**

#### **Chapter 40. Prevention of Transmission of Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human Immunodeficiency Virus (HIV)**

#### **§4001. Definitions**

A. For the purpose of this Chapter, the following terms are defined as follows.

**AIDS** Acquired immune deficiency syndrome, as determined by the Federal Centers for Disease Control (CDC).

**Board** Louisiana State Board of Nursing.

**Body Fluids** Amniotic, pericardial, peritoneal, pleural, synovial and cerebrospinal fluids, semen, vaginal secretions and other body fluids, secretions and excretions containing visible blood.

**Confidentiality**

a. Reports and information furnished to the board pursuant to §4005 of this Chapter and records of the board relative to such information shall not be deemed to constitute public records, but shall be deemed and maintained by the board as confidential and privileged and shall not be subject to disclosure by means of subpoena in any judicial, administrative or investigative proceeding; providing that such reports, information and records may be disclosed by the board as necessary for the board to investigate or prosecute alleged violations of this Chapter.

b. The identity of registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course who have reported their status as carriers of HBV, HCV or HIV to the board's compliance director pursuant to §4005 hereof shall be maintained in confidence by the compliance director and shall not be disclosed to any member, employee, agent, attorney or representative of the board nor to any other person, firm, organization, or entity, government or private, except as may be necessary in the investigation or prosecution of suspected violations of this Chapter.

**Exposure-Prone Procedure** Can invasive procedure in which there is an increased risk of percutaneous injury to the registered nurse, registered nurse applicant, or a nursing student enrolled in a clinical nursing course by virtue of digital palpations of a needle tip or other sharp instrument in a body cavity or the simultaneous presence of the fingers of a registered nurse, registered nurse applicant, or a nursing student enrolled in a clinical nursing course and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site, or any other invasive procedure in which there is a significant risk of contact between the blood or body fluids of the registered nurse, registered nurse applicant, or a nursing student enrolled in a clinical nursing course and the blood or body fluids of the patient. According to the Federal Centers for Disease Control exposure-prone procedures should be identified by medical/surgical/dental organizations and institutions at which the procedures are performed. Examples of exposure-prone procedures: cardiothoracic surgical procedures, including sternal opening and closure, and major gynecological surgical procedures, e.g. caesarian section, hysterectomy. The majority of dentistry procedures are exposure-prone. Invasive procedures where the hands and fingertips of the worker are visible and outside the patient's body at all times, and internal examinations or procedures that do not involve possible injury to the worker's gloved hands from sharp instruments and/or tissues, are considered not to be exposure-prone. These may include: taking blood (venipuncture), setting up and maintaining IV lines or central lines (provided any skin tunneling procedure used for the latter is performed in a non-exposure-prone manner), minor surface suturing, incision of abscesses, routine vaginal or rectal examinations, and simple endoscopic procedures.

**HBV** The hepatitis B virus.

**HBsAg Seropositive** with respect to a registered nurse, registered nurse applicant, or a nursing student enrolled in a clinical nursing course, that a blood test under the criteria of the Federal Centers for Disease Control or of the Association of State and Territorial Public Health Laboratory Directors has confirmed the presence of hepatitis B e antigen.

**HBsAg Seropositive** with respect to a registered nurse, registered nurse applicant, or a nursing student enrolled in a clinical nursing course, that a blood test under the criteria of the Federal Centers for Disease Control or of the Association of State and Territorial Public Health Laboratory Directors has confirmed the presence of hepatitis B surface antigens and that no subsequent test has confirmed that hepatitis B surface antigens are no longer present.

**HCV** The Hepatitis C virus.

**HCV Seronegative** A condition where one has been HCV seropositive but is no longer infectious under the criteria of the Federal Centers for Disease Control or the Association of a State and Territorial Public Health Laboratory Directors, or where one has never been infected with HCV.

**HCV Seropositive** A condition where one has developed antibodies sufficient to diagnose seropositivity to HCV under the criteria of the Federal Centers for Disease Control or the Association of State and Territorial Public Health Laboratory Disease.

**HIV** The human immunodeficiency virus, whether HIV-1 or HIV-2.

**HIV Seropositive** with respect to a registered nurse, registered nurse applicant, or a nursing student enrolled in a clinical nursing course, that a test under the criteria of the Federal Centers for Disease Control or of the Association of State and Territorial Public Health Laboratory Directors has confirmed the presence of HIV antibodies.

**Invasive Procedures** Any procedure involving manual or instrumental contact with, or entry into, any blood, body fluids, cavity, internal organ, subcutaneous tissue, mucous membrane or percutaneous wound of the human body.

**Participating in an Exposure-prone Procedure** The preparation, processing, handling of blood, fluids, tissue or instruments which may be introduced into or come into contact with any body cavity, internal organ, subcutaneous tissue, submucosal tissue, mucous membrane or percutaneous wound of the human body in connection with the performance of an exposure-prone invasive procedure.

**Registered Nurse** Can individual licensed as a registered nurse in Louisiana, or an individual licensed as a registered nurse in another state and holding a 90-day permit to practice nursing in Louisiana in accordance with R.S. 37:920.D and LAC 46:XLVII.3329.B or a nursing student enrolled in a clinical nursing course.

**Registered Nurse Applicant** A graduate of an approved school of nursing who has been issued a temporary working permit, as provided for in R.S. 37:920. D and LAC 46:XLVII.3329.A.

**Standard Precautions** Those generally accepted infection control practices, principles, procedures, techniques and programs as recommended by the Federal Centers for Disease Control to minimize the risk of transmission of HBV, HCV or HIV from a registered nurse or a registered nurse applicant to a patient, from a patient to a registered nurse or registered nurse applicant, or from a

patient to a patient, as such recommendations may be amended or supplemented from time to time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and R.S. 37:1746-1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1150 (September 1993), amended LR 24:1293 (July 1998), amended LR 30:2482 (November 2004).

#### **§4003. Standard Precautions**

A. All registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course shall adhere to standard precautions for the prevention of transmission of infectious diseases as recommended by the Federal Centers for Disease Control for infection-control programs. These precautions include the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments.

B. Registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course who have exudative lesions or weeping dermatitis shall refrain from all direct patient care and from handling patient-care equipment and devices used in performing invasive procedures until the condition resolves.

C. Registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course shall also comply with employing agency's current guidelines for disinfection and sterilization of reusable devices used in invasive procedures.

D. Registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course who perform invasive procedures not identified as exposure-prone, and who are or become infected with HIV, HCV or HBV, shall practice standard surgical or dental technique and comply with standard precautions and current standards for sterilization/disinfection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and R.S. 37:1746-1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1151 (September 1993), amended LR 24:1293 (July 1998), amended LR 30:2484 (November 2004).

#### **§4005. Self-Reporting**

A. Within 90 days of the effective date of this Chapter, registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course who perform, or participate in, exposure-prone procedures and have been previously diagnosed as HBV, (seropositive), HCV and/or HIV seropositive shall give notice of such diagnosis to the board on a reporting form supplied by the board. Such notice shall be mailed to the compliance director, marked "Personal and Confidential" by registered or certified mail. This report shall be confidential as provided in §4001 of this Chapter, definition of confidentiality.

B. Registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course who know or should know that they carry and are capable of transmitting HBV, HCV or HIV and who perform or participate in exposure-prone procedures shall report their status to the Board of Nursing within 30 days from the date of the performance of the diagnostic test. They shall give notice of such diagnosis to the board on a reporting form supplied by the board which shall be mailed to the compliance director, marked "Personal and Confidential," by

registered or certified mail. This report shall be confidential as provided in Act 1009 of the 1991 Louisiana Legislature.

C. Provided that the identity of the self-reporting registered nurse, registered nurse applicant or nursing student enrolled in a clinical nursing course is not disclosed, either directly or indirectly, the provisions of this Section shall not be deemed to prevent disclosure by the compliance director or the board, to governmental public health agencies with a legitimate need therefore, of statistical data derived from such reports, including, without limitation, the number and demographics of registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course having reported themselves as HbsAg, HCV, and/or HIV seropositive and their geographical distribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and R.S. 37:1746-1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1151 (September 1993), amended LR 24:1293 (July 1998), amended LR 30:2484 (November 2004).

#### **§4007. Authorization to Perform or Participate in Exposure-Prone Procedures**

A. Registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course who perform or participate in exposure-prone procedures shall, in the performance of or participation in any such procedure or function, be familiar with, observe, and rigorously adhere to both general infection control practices and standard blood and body-fluid precautions as then recommended by the Federal Centers for Disease Control to minimize the risk of HBV, HCV or HIV from a registered nurse, registered nurse applicant, or a nursing student enrolled in a clinical nursing course to a patient, from a patient to a registered nurse or registered nurse applicant or a nursing student enrolled in a clinical nursing course, or from a patient to a patient.

B. Registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course who perform or participate in exposure-prone procedures and who do not have serologic evidence of immunity to HBV from previous infection, and have not been vaccinated against HBV, shall obtain their HBsAg status and, if that is positive, shall also obtain their HBeAg status.

C. Registered nurses, registered nurse applicants, and nursing students enrolled in a clinical nursing course who are infected with HIV, HCV or HBV (and are HBeAg positive) shall not perform exposure-prone procedures unless they have sought periodic counsel from an expert review panel, as determined by the expert panel, and have been advised under what circumstances, if any, they may continue to perform these procedures.

D. An expert review panel, appointed by the Board of Nursing, shall be constituted of the compliance director, and at least four members representing a balanced perspective, such as one or more of each of the following: a licensed psychiatrist or psychologist, the licensee's personal physician, a member of the agency's infection control committee (if agency has such committee), a registered nurse who is an infectious disease specialist with expertise in the procedures performed by the infected licensee, a state or local public health official.

E. Patients of the seropositive registered nurse, registered nurse applicant, or a nursing student enrolled in a clinical nursing course shall be notified of the registered

nurse's, registered nurse applicant's, or a nursing student's, enrolled in a clinical nursing course, seropositivity before they undergo exposure-prone invasive procedures in which the nurse will participate or perform. If the nurse will perform the procedure, an informed consent shall be obtained from the patient or a lawfully authorized representative.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:918(K), and R.S. 37:1746-1747.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1152 (September 1993), amended LR 24:1293 (July 1998), amended LR 30:2484 (November 2004).

Barbara L. Morvant  
Executive Director

0411#041

## RULE

### Department of Health and Hospitals Board of Pharmacy

Pharmacy Technicians (LAC 46:LIII.Chapters 8 and 9)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Louisiana Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has adopted the following Rule, which shall become effective January 1, 2005.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIII. Pharmacists

**Chapter 8. Repealed.**

**Chapter 9. Pharmacy Technicians**

#### §901. Definitions

A. As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section:

**ACPE** Accreditation Council for Pharmacy Education.

**Pharmacist Preceptor** An individual who is currently licensed as a pharmacist by the board, meets certain qualifications as established by the board, and is responsible for the instructional training of pharmacy technician candidates.

**CPE** Continuing pharmaceutical education, as part of a postgraduate educational program to enhance professional competence.

**CPE unit** A standard of measurement adopted by the ACPE for the purpose of accreditation of CPE programs. One CPE unit is equivalent to 10 credit hours.

**Pharmacy Technician** An individual, certified by the board, who assists in the practice of pharmacy under the direct and immediate supervision of a Louisiana-licensed pharmacist.

**Pharmacy Technician Candidate** An individual not yet certified as a pharmacy technician by the board who is:

a. an individual who possesses a valid registration, is satisfactorily progressing in a board-approved structured program, and is working under the supervision of a pharmacist preceptor for the purpose of obtaining practical experience for certification as a pharmacy technician by the board; or

b. an individual who possesses a valid registration, has successfully completed a board-approved structured program, and is awaiting examination.

**Structured Program** Systematic instruction in pharmacy related functions in a board-approved pharmacy technician training program.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1212.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 30:2485 (November 2004).

#### §903. Pharmacy Technician Candidates

##### A. Registration

##### 1. Qualifications

a. All pharmacy technician candidates shall register with the board; failure to do so may result in disciplinary action by the board.

b. The candidate shall be at least 18 years of age, as evidenced by a valid and legible copy of a birth certificate or other appropriate credential.

c. The candidate shall be of good moral character and non-impaired.

d. The candidate shall be a graduate from a high school approved by a state department of education, or shall possess an equivalent degree of education, as evidenced by a valid and legible copy of a diploma, transcript, or other appropriate credential.

##### e. Exceptions

i. A pharmacist or pharmacist intern whose board credential has been denied, suspended, revoked, or restricted for disciplinary reasons by any board of pharmacy shall not be a pharmacy technician candidate or pharmacy technician.

ii. A pharmacist or pharmacist intern whose board credential is lapsed shall not be a pharmacy technician candidate or pharmacy technician until such lapsed credential is recalled through non-disciplinary board action.

##### 2. Issuance and Maintenance

a. Upon receipt of a properly completed application, appropriate fee, proof of enrollment in a board-approved structured program, and any other documentation required by the board, the board may issue a Pharmacy Technician Candidate Registration to the applicant.

b. The board reserves the right to refuse to issue, recall, or discipline a registration for cause.

c. The registration shall expire 18 months after the date of issuance, and it shall not be renewable.

d. A pharmacy technician candidate shall notify the board, in writing, no later than 10 days following a change of mailing address. The written notice shall include the candidate's name, registration number, and old and new addresses.

e. A pharmacy technician candidate shall notify the board, in writing, no later than 10 days following a change in either training program site or location(s) of employment. The written notice shall include the candidate's name, registration number, and name, address, and permit numbers for old and new training program sites or employers.

##### B. Structured Program

1. All structured programs shall meet competency standards as established by the board.

2. The curriculum of the structured program shall be composed of the elements contained in the *Pharmacy*

*Technician Training Program Minimum Competencies*, as approved by the board.

3. The structured program shall notify the board when a pharmacy technician candidate is no longer satisfactorily progressing in the program.

4. The structured program shall provide an appropriate credential to the candidate who has successfully completed the program.

#### C. Practical Experience

1. The candidate shall possess a registration prior to earning any practical experience in a pharmacy.

2. The candidate's registration shall be conspicuously displayed in the prescription department.

3. The candidate shall wear appropriate attire and be properly identified as to name and candidate status while on duty in the prescription department.

4. A candidate shall not work in a permitted site that is on probation with the board, or with a pharmacist who is on probation with the board.

5. The candidate's registration shall evidence his authority to earn a minimum of 600 hours of practical experience in a pharmacy, under the supervision of a pharmacist preceptor, in satisfaction of the requirements for pharmacy technician certification. Of the required minimum 600 hours, not less than 200 hours shall be earned during and as part of a structured program.

6. A candidate may receive board credit for a maximum of 50 hours per week.

7. Hours of practical experience earned by a candidate shall expire one year after the expiration date of the registration.

#### D. Examination

1. A board-approved technician examination shall consist of integrated pharmacy subject matter and any other disciplines the board may deem appropriate in order to permit the candidate to demonstrate his competency. The candidate shall achieve a passing score, as determined by the board.

##### 2. Re-examination

a. Following the first or second unsuccessful attempt of an examination, the candidate may be permitted to retake that examination.

b. Following the third unsuccessful attempt of an examination, the candidate shall wait one year after the date of the last examination to retake that examination. If the candidate fails to wait the prescribed one year period, the board may delay any future certification until that one year period has elapsed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), repromulgated LR 19:1025 (August 1993), amended LR 23:1307 (October 1997), LR 30:2485 (November 2004).

### §905. Pharmacy Technician Certificate

#### A. Qualifications

1. An applicant for a pharmacy technician certificate shall be at least 18 years of age, as evidenced by a valid and legible copy of a birth certificate or other appropriate credential.

2. An applicant shall be of good moral character and non-impaired.

3. An applicant shall demonstrate the following educational competencies:

a. shall be a graduate from a high school approved by a state department of education, or shall possess an equivalent degree of education, as evidenced by a valid and legible copy of a diploma, transcript, or other appropriate credential; and

b. shall have successfully completed a board-approved structured program for pharmacy technician education and training, as evidenced by a valid and legible copy of the appropriate credential from that program.

4. An applicant shall demonstrate evidence of at least 600 hours of practical experience under the supervision of a pharmacist preceptor, using a form supplied by the board.

5. An applicant shall demonstrate successful completion of a board-approved technician examination, as evidenced by a valid and legible copy of the appropriate credential.

#### B. Issuance and Maintenance

1. Upon receipt of a properly completed and notarized application, properly executed preceptor affidavit(s), copies of valid and legible credentials, and the appropriate fee, and following verification that all requirements have been satisfied, the board may issue a pharmacy technician certificate to the applicant for the current renewal period.

2. The board reserves the right to refuse to issue, recall, or discipline a certificate for cause.

3. The annual renewal shall expire and become null and void on June 30 of each year.

a. The board shall mail, no later than May 1 of each year, an application for renewal to all pharmacy technicians to the address of record.

b. The completed application, along with the appropriate fee, shall be submitted to the board by June 30 of each year.

c. A pharmacy technician shall not assist in the practice of pharmacy in Louisiana with an expired renewal.

d. An application for an expired pharmacy technician renewal, along with the appropriate fee, shall be submitted to the board's Reinstatement Committee for consideration.

4. A pharmacy technician shall notify the board, in writing, no later than 10 days following a change of mailing address. The written notice shall include the technician's name, certificate number, and old and new addresses.

5. A pharmacy technician shall notify the board, in writing, no later than 10 days following a change in location(s) of employment. The written notice shall include the technician's name, certificate number, and name, address, and permit numbers for old and new employers.

6. Upon written request of any certified pharmacy technician in active military service of the United States or any of its allies, the board may waive the requirement for the annual renewal of the certificate, including fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), repromulgated LR 19:1025 (August 1993), LR 30:2486 (November 2004).

### §907. Scope of Practice

A. Pharmacy technician candidates and pharmacy technicians may assist the pharmacist by performing those

duties and functions assigned by the pharmacist while under his direct and immediate supervision.

1. The ratio of candidates to pharmacists on duty shall not exceed one to one at any given time.

2. The ratio of technicians to pharmacists on duty shall not exceed two to one at any given time.

B. Pharmacy technician candidates and pharmacy technicians shall not:

1. receive verbal initial prescription orders;

2. give or receive verbal transfers of prescription orders;

3. interpret prescription orders;

4. compound high-risk sterile preparations, as defined by the United States Pharmacopeia (USP), or its successor;

5. counsel patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 30:2486 (November 2004).

### **§909. Continuing Education**

A. A minimum of one ACPE or board-approved CPE unit, or 10 credit hours, shall be required each year as a prerequisite for annual renewal of a pharmacy technician certificate. Such CPE units shall be credited in the 12-month period prior to the expiration date of the certificate.

B. Certified pharmacy technicians shall maintain copies of their individual records of personal CPE activities at their primary practice site for at least 2 years, and shall present them when requested by the board.

C. If judged appropriate by the board, some or all of the required number of hours may be mandated on specific subjects. When so deemed, the board shall notify all certified pharmacy technicians prior to the beginning of the renewal year in which the CPE is required.

D. Complete compliance with CPE rules is a prerequisite for renewal of a pharmacy technician certificate.

1. Non-compliance with the CPE requirements shall be considered a violation of R.S. 37:1241(A)(2) and shall constitute a basis for the board to refuse annual renewal.

2. The failure to maintain an individual record of personal CPE activities, or falsifying CPE documents, shall be considered a violation of R.S. 37:1241(A)(22).

3. The inability to comply with CPE requirements shall be substantiated by a written explanation, supported with extraordinary circumstances, and submitted to the board for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:779 (August 1991), repromulgated LR 19:1025 (August 1993), amended LR 23:1308 (October 1997), LR 30:2487 (November 2004).

### **§911. Impairment**

A. Pharmacy technician candidates and pharmacy technicians shall be non-impaired.

B. Pharmacy technician candidates and pharmacy technicians who have knowledge that a pharmacist, pharmacist intern, pharmacy technician candidate, or pharmacy technician is impaired shall notify the board of that fact.

C. Pharmacy technician candidates and pharmacy technicians shall be subject to a medical evaluation for impairment by a board-approved addictionist, as authorized by the Louisiana Pharmacy Practice Act, R.S. 37:1161 *et seq.*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 17:779 (August 1991), repromulgated LR 19:1025 (August 1993), amended 23:1308 (October 1997), LR 30:2487 (November 2004).

Malcolm J. Broussard  
Executive Director

0411#036

## **RULE**

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

Federally Qualified Health Centers  
(LAC 50:XI.Chapters 103-105)

Editor's Note: This Rule is being repromulgated to correct non-substantial errors. The original Rule may be viewed on pages 2327-2329 of the October 20, 2004 edition of the *Louisiana Register*.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XI.Chapters 103-105 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 *et seq.*

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule governing federally-qualified health centers under the Medical Assistance Program.

#### **Title 50**

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

#### **Part XI. Clinic Services**

#### **Subpart 13. Federally-Qualified Health Centers**

#### **Chapter 103. Provider Requirements**

#### **§10301. Standards for Participation**

A. Federally-qualified health centers (FQHCs) must comply with the applicable licensure, accreditation and program participation standards for all services rendered. If a FQHC wishes to initiate participation, it shall be responsible for meeting all enrollment criteria of the program.

B. The FQHC provider shall:

1. maintain an acceptable fiscal record keeping system that will enable the services provided by the FQHC to be readily distinguished from each other type of service that the facility may provide;

2. retain all records as are necessary to fully disclose the extent of services provided to recipients; furnish information regarding such records and any payments claimed for providing such services as the Medicaid Program, the Secretary, or the Medicaid Fraud Control Unit may request for five years from date of service;

3. abide by and adhere to all federal and state regulations, guidelines, policies, manuals, etc.; and

4. if an FQHC receives approval for a satellite site, the satellite site must enter into a separate provider agreement and obtain its own Medicaid number.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2328 (October 2004), repromulgated LR 30:2487 (November 2004).

### **§10303. Service Limits**

A. FQHC visits (encounters) are limited to 15 visits per year for services rendered to Medicaid recipients who are 21 years of age or older. FQHC visits for eligibles who are under 21 years of age and for prenatal and postpartum care are excluded from the maximum allowable number of physician visits per year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2328 (October 2004), repromulgated LR 30:2488 (November 2004).

## **Chapter 105. Reimbursement Methodology**

### **§10501. Prospective Payment System**

A. In accordance with Section 1902(aa) of the Social Security Act and the provisions of the Benefits Improvement Act (BIPA) of 2000, payments to federally qualified health centers for Medicaid-covered services will be made under a Prospective Payment System (PPS) and paid on a per visit basis.

B. The PPS per visit rate will be provider specific. To establish the baseline rate for 2001, each FQHC's 1999 and 2000 Medicaid allowable costs, as taken from the FQHC's filed 1999 and 2000 Medicaid cost reports, will be totaled and divided by the total number of Medicaid patient visits for 1999 and 2000. A *visit* is defined as a face-to-face encounter with a licensed practitioner, including:

1. doctors;
2. dentists;
3. clinical psychologists;
4. clinical social workers;
5. nurse practitioners; and
6. physician assistants.

C. For those FQHCs that began operation in 2000 and have only a 2000 cost report available for the determination of the initial PPS per visit rate, the 2000 allowable costs will be divided by the total number of Medicaid patient visits for 2000. Upon receipt of the 2001 cost report, the rate methodology will be applied using 2000 and 2001 costs and Medicaid patient visits to determine a new rate.

D. Upon receipt of the final audited cost reports for 1999 and 2000, the rate will be recalculated using costs and Medicaid patient visits from these reports. Payments will be reconciled against the initial PPS per visit rate with recoupments and lump sum payments issued in accordance with existing state processes for cost report settlement.

E. The baseline calculation will include all Medicaid-covered services provided by the FQHC, regardless of existing methods of reimbursement for said services. This includes, but is not limited to, ambulatory, transportation, laboratory (where applicable), and KidMed and dental

services previously reimbursed on a fee-for-service or other nonencounter basis. The per visit rate will be all inclusive. FQHCs shall not bill separately for any Medicaid-covered services.

F. FQHCs are responsible for apportioning visits and statistical data in the 2001 cost report. The apportionment is for the period from the first day of the 2000 cost reporting period through December 31, 2000. This data is used to calculate cost settlements due from or to providers for the final cost-based reimbursement period in calendar year 2000.

1. Providers with a December 31st fiscal year end do not have to conduct the apportionment cited in Subsection F.

G. Upon completion and implementation of PPS rate determination, the state will reconcile payments back to January 1, 2001 by:

1. calculating a payment amount for eligible patient visits under PPS; and

2. comparing the calculation to payments made for encounters under the previous cost-based reimbursement methodology.

H. No interim or alternate payment methodologies will be developed by the state without prior notification to each enrolled Medicaid FQHC.

I. The FQHC is responsible for notifying the Bureau of Health Services Financing, Rate and Audit Review Section, in writing, of any increases or decreases in the scope of services as defined by the Bureau of Primary Health Care (BPHC) Policy Information Notice 2002-07. If the change is for inclusion of an additional service or deletion of an existing service, the FQHC shall include the following in this notification: the approval by BPHC, the current approved organization budget and a budget for the addition or deletion of services. The notice shall also include a presentation of the impact on total visits and Medicaid visits. A new interim rate will be established based upon the reasonable allowable cost contained in the budget information. Then a final PPS rate will be calculated using the first two years of audited cost reports which include the change in services.

J. If an FQHC receives approval for a satellite site, the PPS per visit rate paid for the services performed at the satellite would be the weighted average cost payment rate per encounter for all FQHCs.

K. The PPS per visit rate for a facility which enrolls and receives approval to operate will be the statewide weighted average payment rate per encounter for all FQHCs.

L. Beginning with federal fiscal year 2002, the PPS per visit rate for each facility will be increased on July 1st of each year by the percentage increase in the published *Medicare Economic Index* (MEI) for primary care services.

M. FQHC services furnished to dual eligibles will be reimbursed reasonable cost which is equivalent to the provider specific prospective payment rate.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2328 (October 2004), repromulgated LR 30:2488 (November 2004).

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

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

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

0411#071

**RULE**

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

Medicaid Eligibility  
Disregard of In-Kind Support and Maintenance

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 the May 20, 1996 Rule governing countable income in the determination of Medicaid eligibility for the SSI-related programs.

Utilizing provisions allowed under Section 1902(r)(2) of the Social Security Act, items such as the value of food or shelter provided to a person by a family, considered In-kind Support and Maintenance, will be disregarded and not counted as income in the eligibility determination for the SSI-related programs.

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

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

0411#068

**RULE**

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

Private and Public Non-State Owned and Operated Hospitals  
Inpatient Psychiatric Services  
Reimbursement Increase

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 repeals the April 1, 2004 Emergency Rule and increases the reimbursement for inpatient psychiatric hospital services provided in private and public non-state owned and operated free-standing psychiatric hospitals and distinct part psychiatric units based on the weighted average for costs reported on the cost report ending in SFY 2002. The costs utilized to determine the weighted average shall include all free-standing psychiatric hospitals and distinct part psychiatric units providing services to Medicaid recipients in the state. Costs shall be trended to the midpoint of the rate year using the Medicare PPS Market Basket Index. The application of inflationary adjustments in subsequent years shall be contingent on the appropriation of funds by the legislature.

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 and the governor's signing of the Appropriation Bill with funding for the reimbursement increase for these hospitals.

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

0411#070

**RULE**

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

Private Intermediate Care Facilities for the Mentally  
Retarded Reimbursement Increase

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 increases the reimbursement paid to private intermediate care facilities for the mentally retarded by 4 percent of the per diem rates in effect on June 30, 2004, net of the provider fees.

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 and the governor's signing of the Appropriation Bill with funding for the reimbursement increase for these facilities.

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

0411#069



## RULE

### Department of Public Safety and Corrections Gaming Control Board

#### Rules of Play

(LAC 42:IX.Chapter 31 and XIII.Chapter 31)

The Louisiana Gaming Control Board hereby amends LAC 42:IX.3103-3107 and XIII.3101-3107 and to repeal LAC 42:IX.3115-3132 and XIII.3115-3133 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 IX. Landbased Casino Gaming

#### Subpart 1. Economic Development and Gaming Corporation

#### Chapter 31. Rules of Play

#### §3103. Rules of Play

A. As approved by the division in writing, the casino operator shall adopt and make available to all patrons at the casino written and comprehensive rules of play governing wagering transactions with patrons.

B. Without limiting the generality of the foregoing, the casino operator's rules of play must specify the amounts to be paid on winning wagers.

C. The casino may offer side wagers for a bonus or progressive jackpot by receiving various combinations in any authorized game, as long as the rules relating to such wagers are clearly specified in the rules of play pursuant to this chapter and approved by the division in writing.

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 25:1959 (October 1999), amended LR 30:2490 (November 2004).

#### §3105. Submission of Rules

A. The casino operator shall submit in writing to the division for review and approval the proposed rules of play prior to the commencement of gaming operations. The casino operator's rules of play shall be attached as an exhibit in the casino operator's internal controls. The casino operator's rules of play shall contain detailed procedures for each game including but not limited to:

1. object of the game and method of play, including what constitutes win, loss or tie bets;
2. physical characteristics of the game, gaming equipment and gaming table;
3. opening and closing of the gaming table;
4. wagers:
  - a. permissible wagers and payout odds;
  - b. manner in which wagers may be made;
  - c. minimum and maximum wagers;
  - d. maximum table payouts as applicable;
5. for each game that uses the following, inspection procedures for:
  - a. cards;
  - b. dice;
  - c. wheels and balls;
  - d. manual and electronic devices used to operate and display progressive games;
6. for each game that uses cards:

- a. shuffling procedures;
- b. card cutting procedures;
- c. procedures for dealing, taking, removing used, damaged and burning cards;
- d. cards, number of decks, number of cards in deck and the valuation of the cards;

7. procedures for the collection of bets and payouts including all requirements for Internal Revenue Service purposes;

8. describe procedures for handling disputes including documenting and reports needed. Include copies of such reports being provided to the Casino Gaming Section;

9. describe procedures for handling suspected cheating or irregularities including the immediate notification to the Casino Gaming Section;

10. describe procedures for dealers/box persons etc. conducting each game including procedures for being relieved;

11. procedures describing irregularities of each game.

B. All table games utilizing cards, for which procedures are described above, shall be dealt from a shoe or shuffling device, except card games which have been approved by the Casino Gaming Section.

C. Any change in the casino's rules of play including permissible rules, wagers and payout odds must be submitted in writing and gain prior written approval by the division before implementation.

D. The casino shall not permit any game to be played other than those specifically named in the act, these regulations, or the casino operator's rules of play in the internal controls as approved by the division. For each game, the casino shall provide a written set of procedures to the division 120 days in advance of commencing the game's operation or within such time period as the division, in its sole discretion, may authorize in writing.

E. Rules of play shall not be considered confidential and copies shall be made available to the public upon request.

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 25:1959 (October 1999), amended LR 30:2490 (November 2004).

#### §3107. Wagers

A. All wagers at gaming tables shall be made by placing gaming chips or tokens on the appropriate area of the gaming table layout. In addition, each player shall be responsible for the correct positioning of their wager or wagers on the gaming layout regardless of whether or not they are assisted by the dealer. Each player must ensure that any instructions they give to the dealer regarding the placement of their wager are correctly carried out.

B. Minimum and maximum wagers and maximum table payouts shall be posted on a sign at each table.

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 25:1959 (October 1999), amended LR 30:2490 (November 2004).

#### §3115. Blackjack (Twenty-One)

Repealed.

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 25:1960 (October 1999), repealed LR 30:2490 (November 2004).

**§3116. Royal Match 21**

Repealed.

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 25:1961 (October 1999), repealed LR 30:2491 (November 2004).

**§3117. Craps**

Repealed.

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 25:1962 (October 1999), repealed LR 30:2491 (November 2004).

**§3119. Roulette**

Repealed.

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 25:1962 (October 1999), repealed LR 30:2491 (November 2004).

**§3120. Baccarat**

Repealed.

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 25:1962 (October 1999), repealed LR 30:2491 (November 2004).

**§3121. Mini-Baccarat**

Repealed.

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 25:1963 (October 1999), repealed LR 30:2491 (November 2004).

**§3122. Midi-Baccarat**

Repealed.

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 25:1963 (October 1999), repealed LR 30:2491 (November 2004).

**§3123. Big Six Wheel**

Repealed.

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 25:1963 (October 1999), repealed LR 30:2491 (November 2004).

**§3125. Bourée**

Repealed.

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 25:1964 (October 1999), repealed LR 30:2491 (November 2004).

**§3127. Poker**

Repealed.

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 25:1964 (October 1999), repealed LR 30:2491 (November 2004).

**§3128. Caribbean Stud Poker**

Repealed.

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 25:1965 (October 1999), repealed LR 30:2491 (November 2004).

**§3129. Pai Gow Poker**

Repealed.

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 25:1966 (October 1999), repealed LR 30:2491 (November 2004).

**§3130. Let It Ride Stud Poker**

Repealed.

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 25:1966 (October 1999), repealed LR 30:2491 (November 2004).

**§3131. Let It Ride Bonus Stud Poker**

Repealed.

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 25:1967 (October 1999), repealed LR 30:2491 (November 2004).

**§3132. Casino War**

Repealed.

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 25:1968 (October 1999), repealed LR 30:2491 (November 2004).

**Part XIII. Riverboat Gaming**

**Subpart 2. State Police Riverboat Gaming Division**

**Chapter 31. Rules of Play**

**§3101. Authority and Applicability**

A. ...

B. The games and gaming activities authorized by this Chapter shall be conducted pursuant to rules and procedures contained in the division's rules and the licensee's rules of play as are approved by the division in writing. In the event of a conflict or inconsistency between the division's rules and the licensee's rules of play, the division's rules shall prevail unless the division issues a written order indicating otherwise in that particular case.

C. ...

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 21:702 (July 1995), amended LR 30:2491 (November 2004).

**§3103. Rules of Play**

A. As approved by the division in writing, each licensee shall adopt and make available to all patrons at its licensed premises written and comprehensive rules of play governing wagering transactions with patrons.

B. Without limiting the generality of the foregoing, the rules of play must specify the amounts to be paid on winning wagers.

C. A licensee may offer side wagers for a bonus or progressive jackpot by receiving various combinations in

any authorized game, as long as the rules relating to such wagers are clearly specified in the rules of play pursuant to this Chapter and approved by the division in writing.

**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 21:702 (July 1995), amended LR 30:2491 (November 2004).

### **§3105. Submission of Rules**

A. Each licensee shall submit in writing to the division for review and approval the proposed rules of play prior to the commencement of gaming operations. The licensee's rules of play shall be included in the licensee's internal controls. The licensee's rules of play shall contain detailed procedures for each game including but not limited to:

1. object of the game and method of play, including what constitutes win, loss or tie bets;
2. physical characteristics of the game, gaming equipment and gaming table;
3. opening and closing of the gaming table;
4. wagers:
  - a. permissible wagers and payout odds;
  - b. manner in which wagers may be made;
  - c. minimum and maximum wagers;
  - d. maximum table payouts as applicable;
5. for each game that uses the following, inspection procedures for:
  - a. cards;
  - b. dice;
  - c. wheels and balls;
  - d. manual and electronic devices used to operate and display progressive games;
6. for each game that uses cards:
  - a. shuffling procedures;
  - b. card cutting procedures;
  - c. procedures for dealing, taking, removing used, damaged and burning cards;
  - d. cards, number of decks, number of cards in deck and the valuation of the cards;
7. procedures for the collection of bets and payouts including all requirements for Internal Revenue Service purposes;
8. describe procedures for handling disputes including documenting and reports needed. Include copies of such reports being provided to the Casino Gaming Section;
9. describe procedures for handling suspected cheating or irregularities including the immediate notification to the Casino Gaming Section;
10. describe procedures for dealers/box persons etc. conducting each game including procedures for being relieved;
11. procedures describing irregularities of each game.

B. All table games utilizing cards, for which procedures are described above, shall be dealt from a shoe or shuffling device, except card games which have been approved by the Casino Gaming Section.

C. Any change in the licensee's rules of play including permissible rules, wagers and payout odds must be submitted in writing and gain prior written approval by the division before implementation.

D. No licensee shall permit any game to be played other than those specifically named in the act, these rules, or the

licensee's rules of play as approved by the division. For each game, the licensee shall provide a written set of game rules to the division 120 days in advance of commencing the game's operation or within such time period as the division may designate.

E. The rules of play shall not be considered confidential and copies shall be made available to the public upon request.

**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 21:702 (July 1995), amended LR 30:2492 (November 2004).

### **§3107. Wagers**

A. All wagers at gaming tables shall be made by placing gaming chips or tokens on the appropriate area of the gaming table layout. In addition, each player shall be responsible for the correct positioning of their wager or wagers on the gaming layout regardless of whether or not they are assisted by the dealer. Each player must ensure that any instructions they give to the dealer regarding the placement of their wager are correctly carried out.

B. Minimum and maximum wagers and maximum table payouts shall be posted on a sign at each table.

**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 21:702 (July 1995), amended LR 30:2492 (November 2004).

### **§3115. Blackjack**

Repealed.

**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 21:702 (July 1995), repealed LR 30:2492 (November 2004).

### **§3117. Craps**

Repealed.

**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 21:702 (July 1995), repealed LR 30:2492 (November 2004).

### **§3119. Roulette**

Repealed.

**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 21:702 (July 1995), repealed LR 30:2492 (November 2004).

### **§3121. Mini-Baccarat Rules of the Game**

Repealed.

**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 21:702 (July 1995), repealed LR 30:2492 (November 2004).

### **§3123. Big Six Wheel**

Repealed.

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 21:702 (July 1995), repealed LR 30:2492 (November 2004).

**§3125. Bourée**

Repealed.

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 21:702 (July 1995), repealed LR 30:2493 (November 2004).

**§3127. Poker**

Repealed.

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 21:702 (July 1995), repealed LR 30:2493 (November 2004).

**§3129. Variations of Poker**

Repealed.

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 21:702 (July 1995), repealed LR 30:2493 (November 2004).

**§3131. Red Dog**

Repealed.

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 21:702 (July 1995), repealed LR 30:2493 (November 2004).

**§3133. Sic Bo**

Repealed.

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 21:702 (July 1995), repealed LR 30:2493 (November 2004).

H. Charles Gaudin  
Chairman

0411#025

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Self-Exclusion (LAC 42:III.304)

The Louisiana Gaming Control Board hereby amends LAC 42:III.304 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 III. Gaming Control Board**

**Chapter 3. Compulsive and Problem Gambling**

**§304. Self-Exclusion**

A. - D.6. ...

b. Administrative hearings regarding or related to self-excluded persons shall be closed to the public and any record created or evidence introduced in conjunction with such hearings shall be maintained confidential and not made available for public inspection.

E. - G.3. ...

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 28:1990 (September 2002), amended LR 30:2493 (November 2004).

H. Charles Gaudin  
Chairman

0411#024

**RULE**

**Department of Public Safety and Corrections  
Office of State Police  
Safety Enforcement Section**

Motor Vehicle Inspection ~~C~~ On-Board Diagnostic Testing  
(LAC 55:III.819)

The Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, in accordance with R.S. 49:950 et seq., and R.S. 32:1301 et seq., hereby amends its rules regulating vehicle inspections to exempt certain vehicles designated by the Department of Environmental Quality from on-board diagnostic testing now performed by motor vehicle inspection stations in the five-parish non-attainment area.

**Title 55**

**PUBLIC SAFETY**

**Part III. Motor Vehicles**

**Chapter 8. Motor Vehicle Inspection**

**Subchapter C. Vehicle Emission Inspection and  
Maintenance Program**

**§819. Anti-Tampering and Inspection and  
Maintenance Parameters**

A. - B. ...

C. Effective January 1, 2002, and in addition to the requirements outlined in Subsections A and B of this Section, the performance of Onboard Diagnostic (OBD II) system checks will be required on all 1996 and newer model year gasoline-fueled passenger cars and gasoline-fueled trucks (10,000 pound gvwr or less) registered in the five parish non-attainment area, except those model year vehicles exempted by the Louisiana Department of Environmental Quality pursuant to R.S. 30:2054(B)(8). These mandatory OBD II checks are to be performed in accordance with the federal Amendments to Vehicle Inspection Maintenance

Program Requirements Incorporating the Onboard Diagnostic Check; Final Rule at 40 CFR Parts 51 and 85 as published in *Federal Register*, Thursday, April 5, 2001 (Volume 66, pages 18156-18179).

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304-1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2434 (December 1999), amended LR 27:2260 (December 2001), LR 28:345 (February 2002), LR 30:2493 (November 2004).

Stephen J. Hymel  
Undersecretary

0411#038

## RULE

### Department of Natural Resources Office of Conservation

Fees (LAC 43:XIX.703 and 707)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation hereby amends the established fees.

#### Title 43

#### NATURAL RESOURCES

#### Part XIX. Office of Conservation General Operations

#### Subpart 2. Statewide Order No. 29-R

#### Chapter 7. Fees

#### §703. Fee Schedule for Fiscal Year 2004-2005

A. - E.3. ...

F. Pipeline Safety Inspection Fees

1. Owners/Operators of jurisdictional gas pipeline facilities are required to pay an annual Gas Pipeline Safety Inspection Fee of \$15 per mile, or a minimum of \$265, whichever is greater.

2. Owners/Operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual Hazardous Liquids Pipeline Safety Inspection Fee of \$15 per mile, or a minimum of \$265, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004).

#### §707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-04/05 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-04/05) supercedes Statewide Order No. 29-R-03/04 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004).

James H. Welsh  
Commissioner

0411#027

## RULE

### Department of Revenue Policy Services Division

Net Operating Loss Deduction (LAC 61:I.1124)

Under the authority of R.S. 47:287.86, R.S. 47:287.785, and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:I.1124 to allow the election to relinquish carryback provided in R.S. 47:287.86(D) to be revocable.

R.S. 47:287.86(D) provides that the election to relinquish the carryback shall be made as prescribed by the secretary. It has been the department's longstanding practice to allow the taxpayer to change its election to relinquish carryback. This regulation will clarify that the election may be changed and inform taxpayers of the necessary procedures.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 11. Corporation Income Tax

#### §1124. Net Operating Loss Deduction

A. Election to relinquish carryback of a net operating loss. The election to relinquish carryback is made by filing a return carrying the net operating loss to the earliest of the taxable years allowed for carryovers.

B. Changes to Election

1. Except as otherwise provided herein, a taxpayer may change the election to relinquish carryback of a net operating loss or the decision to carryback a net operating loss provided any additional tax and interest due as a result of the change is paid and any refund due as a result of the change has not prescribed.

2. The change in the election is made by filing an amended return for each tax year affected, paying any tax and interest due and showing any refunds due.

C. When a change in election is made during an audit or examination, the taxpayer shall submit to the auditor a written notification of the change in election and provide any additional information the auditor may require.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:287.86, R. S. 47:287.785 and R.S. 47:1511.

Cynthia Bridges  
Secretary

0411#035

**RULE**

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

**Alligator Snapping Turtles** Recreational and Commercial Harvest; Prohibitions (LAC 76:XV.101)

The Department of Wildlife and Fisheries and Wildlife and Fisheries Commission do hereby place a moratorium on the commercial harvest from the wild of alligator snapping turtles.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part XV. Reptiles And Amphibians**

**Chapter 1. Guidelines**

**§101. Recreational and Commercial Harvests; Prohibitions**

A. - F.2. ...

G. Turtle Rules and Regulations

1. - 1.e. ...

2. Alligator Snapping Turtle (*Macrolemys temmincki*)

a. Commercial Take Prohibited. No person shall commercially take, possess, sell, purchase, trade, barter, or exchange alligator snapping turtles, their eggs, or any parts thereof. Except that nothing herein shall prohibit the legal commercial sale, and possession of alligator snapping turtles by licensed turtle farmers as provided in R.S. 56:632 et seq. and R.S. 3:2358.1 et seq. which were legally acquired prior to the effective date of this closure or imported legally into this state which have proper records as provided for in 56:637.

b. Recreational Take and Possession Limit. There shall be no size limit on recreationally taken alligator snapping turtles (*Macrolemys temmincki*). Basic recreational fishing license is required as provided in R.S. 56:632.1. No person shall take or possess an alligator snapping turtle taken with commercial gear. No person shall take or possess in the field more than one alligator snapping turtle (*Macrolemys temmincki*), per boat or vehicle per day. Certified zoos, aquariums, universities, research and nature centers will be exempted from take limits.

H. - J.4.g. ...

K. Whoever violates the provisions of this Rule shall be fined not less than \$25 nor more than \$100, or imprisoned for not less than 30 days, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), (13), (15) and (25), R.S. 56:23, and R.S. 56:632.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 20:1135 (October 1994), amended LR 30:2495 (November 2004).

Dwight Landreneau  
Secretary

0411#050

**RULE**

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

**Black Bass** Daily Take and Size Limits (LAC 76:VII.149)

Editor's Note: This Rule is being repromulgated to correct a typographical error. The original Rule may be view in the on page 2339 of the October 20, 2004 edition of the *Louisiana Register*.

The Wildlife and Fisheries Commission amends the following Rule on black bass (*Micropterus* spp.) on Poverty Point Reservoir, located north of the town of Delhi in Richland Parish, Louisiana.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 1. Freshwater Sports and Commercial Fishing**

**§149. Black Bass Regulations** Daily Take and Size Limits

A. - B.3. ...

4. Poverty Point Reservoir (Richland Parish)

a. Size limit: 15 inch - 19 inch slot. A 15-19 inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 15 inches and 19 inches, both measured inclusive.

b. Daily Take: 8 fish with only one fish over 19 inches per person:

i. on water possession same as daily limit per person.

\*Maximum total length the distance in a straight line from the tip of the snout to the most posterior point of the depressed caudal fin as measured with the mouth closed on a flat surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:325(C), R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR:14:364 (June 1988), amended LR 17:277 (March 1991), repromulgated LR 17:488 (May 1991), amended LR 17:1122 (November 1991), LR 20:796 (July 1994), LR 23:1168 (September 1997), LR 24:505 (March 1998), LR 26:97 (January 2000), LR 28:104 (January 2002), LR 29:373 (March 2003), LR 30:2339 (October 2004), LR 30:2495 (November 2004).

Dwight Landreneau  
Secretary

0411#033

**RULE**

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

**Deer Programs (DMAP) and (LADT)**  
(LAC 76:V.111 and 119)

The Wildlife and Fisheries Commission does hereby amend the regulations for participation in the Deer Management Assistance Program (DMAP) and Landowner Antlerless Deer Tag Program (LADT).

## Title 76

### WILDLIFE AND FISHERIES

#### Part V. Wild Quadrupeds and Wild Birds

##### Chapter 1. Wild Quadrupeds

##### §111. Rules and Regulations for Participation in the Deer Management Assistance Program

A. The following rules and regulations shall govern the Deer Management Assistance Program.

1. Application Procedure

a. Application for enrollment of a new cooperator in the Deer Management Assistance Program (DMAP) must be submitted to the Department of Wildlife and Fisheries by August 1. Application for the renewal enrollment of an active cooperator must be submitted to the Department of Wildlife and Fisheries annually by September 1.

b. Each application for a new cooperator must be accompanied by a legal description of lands to be enrolled and a map of the property. Renewal applications must be accompanied by a legal description and map only if the boundaries of the enrolled property have changed from records on file from the previous hunting season. This information will remain on file in the appropriate regional office. The applicant must have under lease or otherwise control a minimum of 500 acres of contiguous deer habitat of which up to 250 acres may be agricultural lands, provided the remainder is in forest and/or marsh. Private lands within Wildlife Management Area boundaries shall be enrolled in DMAP regardless of size.

c. Each cooperator will be assessed a \$25 enrollment fee and \$0.05/acre for participation in the program. DMAP fees must be paid by invoice to the Department of Wildlife and Fisheries Fiscal Section prior to September 15.

d. An agreement must be completed and signed by the official representative of the cooperator and submitted to the appropriate regional wildlife office for his approval. This agreement must be completed and signed annually.

e. Boundaries of lands enrolled in DMAP shall be clearly marked and posted with DMAP signs in compliance with R.S. 56:110 and the provisions of R.S. 56:110 are only applicable to property enrolled in DMAP. DMAP signs shall be removed if the land is no longer enrolled in DMAP. Rules and regulations for compliance with R.S. 56:110 are as follows.

i. The color of DMAP signs shall be orange. The words DMAP and Posted shall be printed on the sign in letters no less than 4 inches in height. Signs may be constructed of any material and minimum size is 11 1/4" x 11 1/4".

ii. Signs will be placed at 1000 foot intervals around the entire boundary of the property and at every entry point onto the property.

f. By enrolling in the DMAP, cooperators agree to allow department personnel access to their lands for management surveys, investigation of violations and other inspections deemed appropriate by the department. The person listed on the DMAP application as the contact person will serve as the liaison between the DMAP Cooperator and the department.

g. Each cooperator that enrolls in DMAP is strongly encouraged to provide keys or lock combinations annually to the Enforcement Division of the Department of Wildlife and

Fisheries for access to main entrances of the DMAP property. Provision of keys is voluntary; however, the cooperator's compliance will ensure that DMAP enrolled properties will be properly and regularly patrolled.

2. Tags

a. A fixed number of special tags will be provided by the department to each cooperator in DMAP to affix to deer taken as authorized by the program. These tags shall be used only on DMAP lands for which the tags were issued.

b. All antlerless deer taken shall be tagged, including those taken during archery season, muzzleloader, and on either-sex days of gun season.

c. Each hunter must have a tag in his possession while hunting on DMAP land in order to harvest an antlerless deer. The tag shall be attached through the hock in such a manner that it cannot be removed before the deer is transported. The DMAP tag will remain with the deer so long as the deer is kept in the camp or field, is in route to the domicile of its possessor, or until it has been stored at the domicile of its possessor, or divided at a cold storage facility and has become identifiable as food rather than as wild game. The DMAP number shall be recorded on the possession tag of the deer or any part of the animal when divided and properly tagged.

d. Antlerless deer harvest on property enrolled in DMAP does not count in the season bag limit for hunters.

e. All unused tags shall be returned by March 1 to the regional wildlife office which issued the tags.

3. Records

a. Cooperators are responsible for keeping accurate records on forms provided by the department for all deer harvested on lands enrolled in the program. Mandatory information includes tag number, sex of deer, date of kill, name of person taking the deer, hunting license number (transaction number, authorization number, lifetime number or date of birth for under 16 and over 59 years of age) and biological data (age, weight, antler measurements, lactation) as deemed essential by the Department of Wildlife and Fisheries Deer Section. Biological data collection must meet quality standards established by the Deer Section. Documentation of mandatory information shall be kept daily by the Cooperator. Additional information may be requested depending on management goals of the cooperator.

b. Information on deer harvested shall be submitted by March 1 to the regional wildlife office handling the particular cooperator.

c. The contact person shall provide this documentation of harvested deer to the department upon request. Cooperators who do not have a field camp will be given 48 hours to provide this requested documentation.

B. Suspension and Cancellation of DMAP Cooperators

1. Failure of the cooperator to follow these rules and regulations may result in suspension and cancellation of the program on those lands involved. Failure to make a good faith attempt to follow harvest recommendations may also result in suspension and cancellation of the program.

a. Suspension of Cooperator from DMAP. Suspension of the cooperator from DMAP, including forfeiture of unused tags, will occur immediately for any misuse of tags, failure to tag any antlerless deer, or failure to submit records to the department for examination in a timely fashion. Suspension of the cooperator, including forfeiture of

unused tags, may also occur immediately if other DMAP rules or wildlife regulations are violated. Upon suspension of the cooperators from DMAP, the contact person may request a Department of Wildlife and Fisheries hearing within 10 working days to appeal said suspension. Cooperation by the DMAP Cooperator with the investigation of the violation will be taken into account by the department when considering cancellation of the program following a suspension for any of the above listed reasons. The cooperator may be allowed to continue with the program on a probational status if, in the judgment of the department, the facts relevant to a suspension do not warrant cancellation.

b. Cancellation of Cooperator from DMAP. Cancellation of a cooperator from DMAP may occur following a guilty plea or conviction for a DMAP rule or regulation violation by any individual or member hunting on the land enrolled in DMAP. The cooperator may not be allowed to participate in DMAP for one year following the cancellation for such guilty pleas or conviction. Upon cancellation of the cooperator from DMAP, the contact person may request an administrative hearing within 10 working days to appeal said cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 17:204 (February 1991), amended LR 25:1656 (September 1999), LR 26:2011 (September 2000), LR 30:2496 (November 2004).

#### **§119. Rules and Regulations for Participation in the Landowner Antlerless Deer Tag Program**

A. The following rules and regulations shall govern the Landowner Antlerless Deer Tag (LADT) Program.

1. Eligibility: The following landowners or lessees are eligible to participate in this program.

a. Licensed Deer Farmers authorized to hunt deer by Department of Agriculture and Forestry and Department of Wildlife and Fisheries (LDWF).

b. Landowners or lessees with less than 500 acres who have verified deer depredation problems and have met all of the requirements of LDWF as stated in the Nuisance Deer Management Program and who are dependent upon this commercial crop as a major source of income.

c. Landowners with 40 acres or more enrolled in the Louisiana Forest Stewardship Program and who have a written wildlife management plan on file with LDWF.

d. Landowners or lessees with 40 or more contiguous acres of forested or marsh land.

#### **2. Application Procedure**

a. Application for enrollment in the Landowner Antlerless Deer Tag Program must be submitted to the Regional Office, Deer Program personnel, or Forest Stewardship Program personnel of LDWF prior to September 1. The application will become an official agreement between the applicant and LDWF.

b. Each applicant will be assessed a \$25 administrative processing fee which must be paid prior to October 1. Applicant must identify the enrolled property on a Louisiana road atlas that will be kept on file in the Region Office.

c. By enrollment in this program the applicant agrees to allow LDWF personnel access to their land for

management surveys, investigations of violations and other inspections deemed appropriate by the department.

d. Boundaries of lands enrolled in the LADT program shall be clearly marked and posted with LADT or DMAP signs. Signs will be placed at 1000 foot intervals around the entire boundary of the property and at every point onto the property. Signs shall be removed if the land is no longer enrolled in the program. The color of the LADT sign shall be white, with the words LADT and Posted printed on the sign in letters no less than four inches. The minimum sign size is 11 1/4" x 11 1/4".

#### **3. Tags**

a. A fixed number of Landowner Antlerless Deer Tags will be provided by the department to each applicant that must be attached to each antlerless deer harvested during the regular deer season. These tags can be used only on the land for which they were issued and must be attached to all antlerless deer killed during the entire deer season including special either-sex days. Tag allotment for each applicant will be determined by Deer Program personnel.

b. The total harvest of antlerless deer is restricted to that number of antlerless deer for which tags were issued. Once the number of antlerless deer for which tags were issued have been killed, all deer hunting will then be for bucks-only, even though there may be either-sex days later in the season for the Area at large. No additional tags will be issued to the applicant.

c. Each hunter must have the Landowner Antlerless Deer Tag in his possession while hunting on the property for which the tag was issued and immediately upon kill of an antlerless deer, the hunter must tag the animal through the hock. The deer must be tagged before it is transported from the site of kill and the tag will remain with the deer while the hunter is in route to his domicile. The tag number will be recorded on the possession tag for the deer or any part(s) of the animal when divided and properly tagged among other individuals.

d. Antlerless deer harvested on property enrolled in LADT does not count in the season bag limit for hunters.

#### **4. Records**

a. Approved applicants will keep daily records for all deer harvested as required by LDWF personnel. This information along with any unused tags will be submitted to the Regional Office, the Deer Program, or Forest Stewardship Program personnel by March 1. Information will include: Date of kill; Name of hunter; Social Security number of hunter; Hunting license # of hunter, if applicable; Sex of animal; Landowner Antlerless Tag Number. Additional biological information from harvested deer may be required of some applicants for management purposes.

b. Approved applicants will provide documentation of harvested deer during the season to Department personnel upon request. Applicants will be given 48 hours to provide this requested information.

#### **5. Cancellation of Program**

a. Failure of the approved applicant or other persons permitted to hunt on this property to follow these rules and regulations may result in cancellation of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.



HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:2011 (September 2000), amended LR 27:1935 (November 2001), LR 30:2497 (November 2004).

Dwight Landreneau  
Secretary

0411#049

## RULE

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Spotted Seatrout Management Measures (LAC 76:VII.341)

The Wildlife and Fisheries Commission does hereby amend a Rule, LAC 76:VII.341, modifying the existing Rule. Authority for adoption of this Rule is included in R.S. 56:6(25)(a) and 56:326.3.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishery

#### §341. Spotted Seatrout Management Measures

##### A. Commercial Season; Quota; Permits

1. The commercial season for spotted seatrout whether taken from within or without Louisiana state waters shall remain closed until January 2 of each year, when it shall open and remain open through July 31 of each year, or until the quota is reached, or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever comes first.

2. The commercial quota for spotted seatrout shall be 1,000,000 pounds for each fishing season.

##### 3. Permits

a. The commercial taking of spotted seatrout is prohibited except by special nontransferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents. This permit, along with other applicable licenses, authorizes the bearer to sell his spotted seatrout catch.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements.

i. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

ii. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant using any of the methods listed below.

(a). Method 1. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return including all attachments (i.e. Schedule C of federal form 1040, form W-2, etc.), which has been certified by the Internal Revenue Service (IRS).

(b). Method 2. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return including all attachments (i.e. Schedule C of federal form 1040, form W-2, etc.), which has been filed and stamped "Received" at a local IRS office accompanied by a signed cover letter acknowledging receipt by the IRS.

(c). Method 3. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a signed copy of his federal tax return including all attachments (i.e. Schedule C of federal form 1040, form W-2, etc.) along with an IRS stamped transcript and IRS signed cover letter. Transcripts are available at local IRS offices.

iii. The Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance, will review the submitted tax return information and determine applicant's eligibility as defined by R.S. 56:325.3 D(1)(b).

iv. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

v. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. No person shall qualify for a charter boat fishing guide license and a spotted seatrout permit during the same licensure period.

B. General Provisions. The commercial closure shall apply to spotted seatrout taken, landed or possessed on the water whether taken from within or without Louisiana waters. Effective with the closure, no person shall commercially harvest, take, land or possess spotted seatrout in excess of a recreational limit in Louisiana. Effective with the commercial closure no person shall sell, barter, trade, exchange, purchase or attempt to sell, barter, trade, exchange or purchase spotted seatrout. Nothing herein shall prohibit the purchase, sale, barter or exchange of spotted seatrout off the water by licensed commercial dealers taken during any open period or which are legally imported into the state if appropriate records are properly maintained in accordance with R.S. 56:306.5 and R.S. 56:306.6 and those that are required to do so shall be properly licensed in accordance with R.S. 56:303, 56:306 or 56:306.1.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a), R.S. 56:325.3, R.S. 56:326.3, Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3, and Act 1164 of the 2003 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended LR 22:238 (March 1996), LR 24:360 (February 1998), LR 26:2333 (October 2000), LR 30:2498 (November 2004).

Dwight Landreneau  
Secretary

0411#051

# Notices of Intent

## NOTICE OF INTENT

### Department of Economic Development Office of the Secretary

#### Governor's Economic Development Rapid Response Program (LAC 13:Part V.Chapter 2)

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. 36:104 and 36:108, hereby gives notice of its intent to adopt the following Rules for the Governor's Economic Development Rapid Response Program.

The Department of Economic Development, Office of the Secretary, has found a need to provide Rules regarding the creation and regulation of the Governor's Economic Development Rapid Response Program to provide for immediate funding of all or a portion of economic development projects in order to successfully secure the creation or retention of jobs by a business entity in Louisiana under such circumstances as may be determined by the Secretary of Economic Development and the Governor of Louisiana. Without these Rules the state of Louisiana may suffer the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

The text of this proposed Rule may be viewed in the Emergency Rule section of this *Louisiana Register*.

#### **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., Friday, December 10, 2004.

Michael J. Olivier  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Governor's Economic Development Rapid Response

#### 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 of the Department 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 benefits of such Rules will inure to new or expanding Louisiana-based businesses which will make new investments or increase their existing investment in Louisiana-based economic development projects, and will create and/or retain jobs for Louisiana citizens. These Rules are intended to take advantage of opportunities for business development in Louisiana, provide assistance in the formation and expansion of businesses in Louisiana, encourage the creation of quality jobs, increase in the state's production capabilities, and increase the diversification of the state's economy; all of which will enhance and expand economic development throughout Louisiana and improve the standard of living and the quality of life of Louisiana citizens.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Investments by new and expanding Louisiana-based businesses as contemplated by the Rule will enhance this state's economic development through the formation of new and the expansion of existing businesses, which investments in Louisiana will help create and/or retain jobs for Louisiana citizens and thereby enhance and expand economic development throughout Louisiana. By taking advantage of such business opportunities which may otherwise be exported out of Louisiana, local development, expansion and operation of such businesses will create increased competition among businesses and correspondingly increase employment prospects for Louisiana residents throughout the state.

Richard House  
Executive Counsel  
0411#072

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

School Approval Standards and Regulations, Early Childhood Programs, Pupil Progression and Remedial Education, Competency Based Education, and State Content Standards (LAC 28:I.901, 906, 907, 925, and 930)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to Chapter 9 (LAC 28:I). The *Louisiana Administrative Code* should contain regulatory policies and procedures germane to the conduct of BESE business. The board is in the process of removing Sections that either contain no regulatory language, the programs they refer to no longer exist, or the language will be transferred to or is already contained in the appropriate regulatory bulletin. The Sections being removed will not have an effect on the way BESE conducts board business or the regulatory procedures or language used to oversee any programs.

#### Title 28 EDUCATION

##### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans §901. School Approval Standards and Regulations

A. - I. Repealed.

J. - J.2. ...

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); R.S. 17:151.1; R.S. 17:151.3; R.S. 17:176; R.S. 17:232; R.S. 17:191.11; R.S. 17:1941; R.S. 17:2007; R.S. 17:2050; R.S. 17:2501-2507; P.L. 94-142; R.S. 17:154(I); R.S. 17:402.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:483 (November 1975), amended LR 2:109, 133, 200, 225, 312, 317, 350, 406 (April, May, June, July, August, September, October, December 1977), LR 4:1, 70, 204, 207, 240, 294, 337, 360 (January, March, May, July, September, October, November 1978), LR 5:62, 77, 94, 140, 168, 276, 326, 345, 476 (March, April, May, June, July, September, October, November, December 1979), LR 6:53, 54, 144, 204, 488, 543 (February, April, July, August, September 1980), LR 7:288, 407, 484 (June, August, October 1981), LR 8:63, 142, 234, 276, 472, 510, (February, March, May, June, September, October 1982), LR 9:60, 389, 530, 548, 676, 753, 832, 836 (February, June, August, October, November, December 1983), LR 10:3, 7, 76, 280, 875, 876, 997, (January, February, April, November, December 1984), LR 11:7, 520, 617, 685, 758, 848, 945, 1065 (January, May, June, July, August, September, October, November 1985), LR 12:225, 420, 421, 667, 762, 763 (April, May, July, October, November 1986), LR 13:14, 84, 236, 290, 393, 433, 495, 496 (January, February, April, May, July, August, September 1987), LR 14:10, 145, 146, 227, 292, 348, 423, 531, 608, 609, 703, 861 (January, March, April, May, June, July, August, September, October, December 1988), LR 15:80, 260, 261, 376, 468, 544, 818, 819, 962 (February, April, May, June, July, October, November 1989), amended LR 16:297, 396, 496, 497, 680, 765, 767, 849, 956, 1055 (April, May, June, August, September, October, November, December 1990), LR 17:174, 354, 651, 771, 772, 1081, 1203 (February, April, July, August, November, December 1991), LR 18, 27, 155, 492, 601, 1117, 1248 (January, March, May, October, November 1992), LR 19:738, 1309, 1416 (June, October, November 1993), LR 20:161, 282, 646, 868-869, 1260-1261 (February, March, June, August, November 1994), LR 21:259, 462, 1078 (March, May, October 1995), LR 22:1123 (November 1996),

LR 23:403 (April 1997), LR 23:560,709, 1644 (May, June, December 1997), LR 24:1085 (June, 1998), amended LR 24:1495 (August 1998), amended LR 24:1896 (October 1998), amended LR 25:249 (February 1999), amended LR 25:419, 421 (March, 1999), amended LR 25:831, 832 (May, 1999), amended LR 25:1084, 1090 (June, 1999), amended LR 25:1217, 1237 (July, 1999), amended LR 25:1433 (August, 1999), amended LR 25:1433, 1436 (August, 1999), LR 25:1793 (October, 1999), LR 25:2160, 2166 (November, 1999), LR 25:2166, 2167 (November, 1999), LR 26:62 (January, 2000), LR 26: 244, 245 (February, 2000), LR 26:246, 247 (February, 2000), LR 26:247, 248 (February, 2000), LR 26:458 (March, 2000), LR 26:458, 459 (March, 2000), LR 26:635 (April, 2000), LR 26:1260 (June, 2000), LR 26:1260, 1261 (June, 2000), LR 26:1430 (July 2000), LR 26:1430, 1431 (July 2000), LR 26:1431-1432 (July 2000), LR 26:1432 (July 2000), LR 26:1575 (August 2000), LR 26:2259 (October 2000), LR 27:32, 34 (January 2001), LR 27:184 (February 2001), LR 27:185 (February 2001), LR 27:185, 187 (February 2001), LR 27:187 (February 2001), LR 27:694 (May 2001), LR 27:694, 695 (May 2001), LR 27:695, 702 (May 2001), LR 27:815-820 (June 2001), LR 27:1005, 1006 (July 2001), LR 27:1181 (August 2001), LR 27:1181, 1182 (August 2001), LR 27:1182, 1189 (August 2001), LR 27:1512, 1516 (September 2001), LR 27:1674, 1676 (October 2001), LR 27:1832,1833 (November 2001), LR 27:1833, 1840 (November 2001), LR 27:1840 (November 2001), LR 27:2086, 2094 (December 2001), LR 27:2095 (December 2001), LR 28:269, 271 (February 2002), LR 28:272, 273 (February 2002), LR 28:991,993 (May 2002), LR 28:1187 (June 2002), LR 28:1724,1725 (August 2002), LR 28:1725 (August 2002), LR 28:1725, 1726 (August 2002), LR 28:1726 (August 2002), LR 28:1936 (September 2002), LR 28:1936-1937 (September 2002), LR 28:1937 (September 2002), LR 28:2182 (October 2002), LR 28:2322, 2323 (November 2002), LR 28:2323, 2329 (November 2002), LR 28:2498, 2500 (December 2002), LR 29:33 (January 2003), LR 29:117 (February 2003), LR 29:286,287 (March 2003), LR 29:287 (March 2003), LR 29:287, 298 (March 2003), LR 29:299, 306 (March 2003), LR 29:552 (April 2003), LR 29:552, 553 (April 2003), LR 29:670 (May 2003), LR 29:865, 866 (June 2003), LR 31:

##### §906. Early Childhood Programs

A. - A.2. ...

B. Repealed.

C. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 18:1249 (November 1992), amended LR 19:1549 (December 1993), LR 20:416 (April 1994), LR 21:1220 (November 1995), LR 24:295 (February 1998), LR 25:254 (February 1999), LR 31:

##### §907. Pupil Progression and Remedial Education

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 7:24.4 and R.S. 17:394-400.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 6:144, 539, 651 (April, September, November 1980), LR 8:216, 323, 510 (June, July, October 1982), LR 11:685 (July 1985), LR 12:420 (July 1986), LR 15:622 (August 1989), amended LR 16:297 (April 1990), LR 16:766 (September 1990), LR 19:1417 (November 1993), LR 24:2081 (November 1998), repealed LR 31:

##### §925. Competency Based Education

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4; R.S. 17:391.1-391.11.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 8:63 (February 1982), amended LR 8:188 (April 1982), LR 9:60 (February 1983), LR 10:400 (May 1984), LR 10:745 (October 1984), LR 11:520 (May

1985), LR 11:848 (September 1985), LR 12:14 (January 1986), LR 12:762 (November 1986), LR 13:496 (September 1987), LR 13:563 (October 1987), LR 14:10 (January 1988), LR 15:469 (June 1989), LR 16:297 (April 1990), LR 16:605 (July 1990), repealed LR 31:

**§930. State Content Standards**

- A. - F.2. Repealed.
- G. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 24:296 (February 1998), amended LR 24:2088 (November 1998), LR 31:

Interested persons may submit written comments until 4:30 p.m., January 9, 2005, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: School Approval Standards and Regulations, Early Childhood Programs, Pupil Progression and Remedial Education, Competency Based Education, and State Content Standards**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The *Louisiana Administrative Code* should contain regulatory policies and procedures germane to the conduct of BESE Board business. We are in the process of removing sections that either contain no regulatory language, the programs they refer to no longer exist, or the language will be transferred to or is already contained in the appropriate regulatory bulletin. The sections we are removing will not have an effect on the way BESE conducts Board business or the regulatory procedures or language used to oversee any programs.

This action will have no fiscal effect other than \$136.00 for advertising in the Louisiana Register.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This action will have 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)**

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This action will have no effect on competition and employment.

Weegie Peabody  
Executive Director  
0411#022

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 111 **Louisiana School, District,  
and State Accountability System**  
(LAC 28:LXXXIII.4310-4313)

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 111 Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The State's Accountability System is an evolving system with different components. These changes take advantage of new flexibility in guidance for No Child Left Behind and address situations that were not considered when the accountability policy was initially written.

**Title 28**

**EDUCATION**

**Part LXXXIII. Bulletin 111 Louisiana School, District,  
and State Accountability System**

**Chapter 43. District Accountability**

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

**A. District Subgroup Component Indicators**

1. Each district shall be evaluated on the subgroup component at three different levels (grade-clusters); elementary (K-5), middle (6-8), and high school (9-12). A district shall pass the subgroup component provided that each subgroup of students within each grade-cluster meets the passes the subgroup component, and each grade-cluster the district, as a whole, meets the criteria for status or improvement on the additional academic indicator.

**a. Passing the Subgroup Component**

i. Participation rate test: 95 percent of the students within the each subgroup within each grade-cluster participated in the standards-based assessments; and

ii. Annual Measurable Objective status test (AMO status test): the subgroup percent proficient score within each grade-cluster is at/or above the annual measurable objective in ELA and mathematics; or

**iii. Safe harbor test:**

(a) the percentage of non-proficient students within the each subgroup within each grade-cluster reduced declined by at least 10 percent of the previous year's value; and

(b) the subgroup improved or met the criterion on the additional academic indicator (attendance rate for the elementary and middle schools grade-clusters and non-dropout rate for the high schools grade-cluster).

b. 2002-03 will be year one of judging districts based on the subgroup component.

c. 2003-04 will be year two of judging districts based on the subgroup component.

d. For the non-proficient reduction portion of the safe harbor test, a comparison of current year assessment data to the previous year assessment data shall be used. For the additional academic indicator check for the safe harbor test and for the whole grade-cluster district check, attendance and dropout data from two years the prior year will be compared to data from three years prior.

e. To ensure high levels of reliability, Louisiana will apply a 99 percent confidence interval to the calculations of subgroup component determinations for:

- i. AMO status test;
  - ii. reduction of non-proficient students (safe harbor test); and
  - iii. status attendance/non-dropout rate analyses.
- f. Louisiana will not apply a confidence interval to improvement analyses for attendance/non-dropout rate.

**B. Inclusion of Students in the Subgroup Component**

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

- a. Enrolled for the Full Academic Year (FAY):
  - i. at school level enrolled at the school on Oct. 1 and the date of testing;
  - ii. at district level enrolled in the district on Oct. 1 and the date of testing;
  - iii. at state level enrolled in a public LEA in the state on Oct. 1 and the date of testing.
- b. First administration of the test:
  - i. only the first test administration will be used for the subgroup status and growth tests;
  - ii. excludes summer school results and repeaters.
- c. Not exempted from testing due to medical illness, death of the student's family member(s), the student being in protective custody, or the student being identified as LEP and in an English-speaking school for less than one full academic year.
- d. Beginning with the fall 2005 accountability results, former LEP students for up to two years after no longer being considered LEP under state rules.

e. These students will not count toward the minimum n for the LEP subgroup and will not be included in the SPS Growth Target adjustment.

2. For analyses involving the additional academic indicator, all students in each subgroup within each grade-cluster in the district shall be included.

3. Each subgroup (African American, American Indian/Alaskan Native, Asian, Hispanic, White, Economically Disadvantaged, Limited English Proficient, Students with Disabilities, and All Students) within each grade-cluster within each district shall be evaluated separately on ELA and mathematics.

a. In calculating the subgroup component for a district, the alternate academic achievement standards for students participating in LAA will be used, provided that the percentage of LAA students scoring proficient at the district level does not exceed 1.0 percent of all students in the grades assessed. If the district exceeds the 1.0 percent cap, the district shall request a waiver. If the district fails to request the waiver or if the district requests the waiver but it

is determined by LDE that ineligible students were administered LAA, the students that exceed the cap or that are ineligible shall be assigned a zero on the assessment and considered non-proficient.

b. Students participating in LAA shall be included in the special education subgroup.

c. LEP students shall participate in the statewide assessments.

i. scores shall not be included in AMO or improvement in Percent Proficient calculations for LEP students who have not been enrolled in an English-speaking school for one full school year.

4. Subgroups shall consist of:

- a. at least 10 students in order to be evaluated for the subgroup component;
- b. at least 40 students in order to be evaluated for the 95 percent participation rate.

5. Subgroups shall pass the participation rate test and either the AMO status test; or the safe harbor test in order to be considered as having passed the subgroup /component.

**C. AMO**

1. The Annual Measurable Objective (AMO) is the percent of students required to reach the proficient level in a given year on the standards-based assessments, which through 2005 will include English/language arts and mathematics tests for 4th, 8th, and 10th grades.

a. Proficient = a score of basic, mastery or advanced.

2. As required in NCLB, the AMOs have been established based on the baseline percent proficient score (proficient = CRT level of basic, mastery, or advanced) in English-language arts and mathematics in the 20th percentile school, using the 2002 CRT test scores in ELA and mathematics for grades 4, 8, and 10.

3. The AMOs for ELA and math are as follows.

School Year	ELA	Mathematics
2001-2002		
2002-2003	36.9%	30.1%
2003-2004	36.9%	30.1%
2004-2005	47.4%	41.8%
2005-2006	47.4%	41.8%
2006-2007	47.4%	41.8%
2007-2008	57.9%	53.5%
2008-2009	57.9%	53.5%
2009-2010	57.9%	53.5%
2010-2011	68.4%	65.2%
2011-2012	78.9%	76.9%
2012-2013	89.4%	88.6%
2013-2014	100.0%	100.0%

4. A 99 percent confidence interval shall be used when evaluating whether subgroups within a grade-cluster within a district have attained the Annual Measurable Objective (AMO).

5. A confidence interval is a statistic that creates a range of scores. Subgroups with a 95 percent participation rate that attain a percent proficient score within or above the confidence interval range for the AMO shall be considered as having passed the subgroup component. Confidence interval ranges are affected by subgroup size. Smaller subgroups will have a wider range and larger subgroups will have a narrower range.

**D. Safe Harbor**

1. Subgroups that do not pass the AMO status test by attaining a percent proficient score within or above the confidence interval range shall be evaluated for safe harbor.

2. Safe harbor is attained if:

a. the subgroup makes a 10 percent reduction in its non-proficiency rate from the previous year:

i. a 99 percent confidence interval is applied to this reduction check; and

b. the subgroup:

i. achieves a 90 percent non-dropout rate (9-12) or attendance rate (K-5, 6-8) (any LEA without a 12th grade shall use attendance rate). (A 99 percent confidence interval is applied to the 90 percent attendance rate and 90 percent non-dropout rate check); or

ii. makes at least 0.1 percent improvement in non-dropout rate (9-12) or attendance rate (K-5, 6-8) from the previous year (any LEA without a 12th grade shall use attendance rate).

3. The non-dropout rate shall be evaluated for students in grade 9 and above.

4. Subgroups passing the participation rate test and achieving safe harbor shall be considered as having passed the subgroup component.

**E. Failing the Subgroup Component**

1. A district shall fail the subgroup component if ANY subgroup within that ANY grade-cluster in the district fails the participation rate test, the ELA or math AMO status test and the safe harbor test.

2. A grade-cluster district in which all subgroups have passed the subgroup component must also have the grade-cluster district pass the additional academic indicator:

a. achieved a 90 percent non-dropout rate (9-12) or attendance rate (K-5, 6-8) (any LEA without a 12th grade shall use attendance rate). (A 99 percent confidence interval is applied to the 90 percent non-dropout or attendance rate check.); or

b. make de at least 0.1 percent improvement in non-dropout rate (9-12) or attendance rate (K-5, 6-8) from two years prior to the previous year (any LEA without a 12th grade shall use attendance rate).

NOTE: If a grade-cluster district in which all subgroups have passed the subgroup component does not pass the additional academic indicator, it shall not pass the subgroup component.

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

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

**§4311. Performance Labels**

A. Districts shall be assigned a DPS performance label as follows:

A district shall not receive a label for its district performance score.

Performance Label	District Performance Score
Academically Unacceptable	Below 45.0
Academic Warning*	45.0 – 59.9
★	60.0 – 79.9
★★	80.0 – 99.9
★★★	100.0 – 119.9
★★★★	120.0 – 139.9
★★★★★	140.0 and above

\*Effective with the 2005 performance labels, the definition of an academically unacceptable district shall be any district with

a DPS below 60.0. The academic warning label will be used only with the 2003 and 2004 district performance scores.

B. A label shall be reported for the District Responsibility Index (DRI) and for each of the four indicators.

District Responsibility Index	DRI Label
120.0 or more	Highly responsive
100.0 – 119.9	Adequately responsive
80.0 – 99.9	Responsive
60.0 – 79.9	Minimally responsive
0.0 – 59.9	Unresponsive

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:

**§4313. Corrective Actions**

A. The Louisiana Department of Education shall report district scores and labels on every school district. Consequences imposed on a district shall be based on its District Responsibility Index (DRI). Any district receiving a performance label of unsatisfactory for its DRI shall become subject to an operational audit. If a district scores unsatisfactory again within two years, the SBESE shall have the authority to act on the audit findings, including the withholding of funds to which the district might otherwise be entitled.

B. Beginning in 2004, districts shall be evaluated on their District Responsibility Index Label and on the subgroup component. Districts that receive a DRI Index label of Unresponsive and/or fail to achieve Adequate Yearly Progress (AYP) in the subgroup component shall complete district self-assessments and submit it to the Louisiana Department of Education.

1. The DOE shall review each self-assessment.

2. The DOE may recommend that BESE schedule a District Dialogue with the district.

C. Districts that receive a DRI Index label of Unresponsive for a second consecutive year and/or fail to achieve AYP in the subgroup component for a second consecutive year are identified for improvement by the subgroup component shall write District Improvement Plans based on the prior years' self-assessments and submit those plans to the LDE.

1. A district is identified for improvement when it fails in all grade-clusters, in the same subject, to achieve subgroup AYP for two consecutive years.

2. The DOE shall review each District Improvement Plan.

3. The DOE may recommend that BESE schedule a District Dialogue with the District.

D. Districts that receive a DRI Index label of Unresponsive and/or fail in all grade-clusters, in the same subject, to achieve AYP in the subgroup component for a third consecutive year shall be audited by the LDE. The audit shall include academic, fiscal, and support services.

E. BESE shall take action on the findings of the prior years audit for districts that receive a DRI Index label of Unresponsive and/or fail in all grade-clusters, in the same subject, to achieve AYP in the subgroup component for a fourth consecutive year. Actions taken shall be dependent

upon whether identification was through the DRI label or the subgroup component.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:

Interested persons may submit comments until 4:30 p.m., January 9, 2005, 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 111** Louisiana School, District, and State Accountability System

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs (savings) to state governmental units. The proposed changes outline district subgroup component grade cluster evaluation procedures and district corrective actions for subgroup component failure in the same subject for two consecutive years.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)

There will be no estimated costs and/or economic benefits to persons or non-governmental groups directly affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There will be no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0411#018

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 741 Louisiana Handbook for Nonpublic School  
Administrators Graduation Exit Examination  
(LAC 28:LXXIX.2511)

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 *Nonpublic Bulletin 741 Louisiana Handbook for Nonpublic School Administrators*. In August 2004, the Board of Elementary and Secondary Education voted to eliminate the BESE Honor's Curriculum for both public and nonpublic schools. This policy will not take effect until the 2006-2007 school year so that students who are currently juniors and seniors can still receive this recognition. Students should be encouraged to meet both the core course and grade-point

requirements for TOPS. The BESE Honors Curriculum has no grade-point requirements and does not allow the substitutions as TOPS does.

### Title 28

### EDUCATION

#### Part LXXIX. Bulletin 741 Louisiana Handbook for Nonpublic School Administrators

#### Chapter 25. Curriculum and Instruction

#### Subchapter C. Secondary Schools

#### §2511. Graduation Exit Examination

A. - E. ....

F. - F.10. Repealed.

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 29:2351 (November 2003), amended LR 31:

Interested persons may submit written comments until 4:30 p.m., January 9, 2005, 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 741** Louisiana Handbook for Nonpublic School Administrators Graduation Exit Examination

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will not be any implementation costs. This policy change eliminates the BESE Honor's Curriculum.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no effects on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)

There are no effects 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  
0411#021

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 746 Louisiana Standards for State  
Certification of School Personnel Requirements  
for Certification as Superintendent, Ancillary  
Superintendent, and Education Leader 3  
(LAC 28:1.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for

advertisement an amendment to *Bulletin 746* Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:1.903.A. This revision to the policy for certification as a Superintendent, Ancillary Superintendent, and Educational Leader 3 allows experience as an assistant principal to qualify for administrative experience. The assistant principal experience would be limited to a maximum of two years of experience in that position. This will allow more flexibility in the certification of higher-level school administrators.

## 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

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), LR 28:2505-2508 (December 2002), LR 29:117-119 (February 2003), LR 29:119-121 (February 2003), LR 29:121-123 (February 2003), LR 31:

\* \* \*

###### Parish or City School Superintendent

A parish or city school superintendent must meet the following criteria:

1. Hold a valid Type A or Level 3 Louisiana Teaching Certificate.

2. Have had five years of successful school experience (state, parish, or city) as a superintendent, assistant superintendent, supervisor of instruction, principal, or assistant principal in a state-approved system, or experience certified as equivalent to any of these by the Board of Elementary and Secondary Education. The assistant principal experience would be limited to a maximum of two years of experience in that position.

3. Hold an earned master's degree from a regionally accredited institution of higher education.

4. Have completed 48 semester hours of graduate credit, to include the following:

A. Thirty semester hours in educational administration and supervision of instruction, to include the following:

1) Foundations of (Introductory) Educational Administration or Theory of Educational Administration.

2) School Law.

3) Principles of Instructional Supervision (Elementary or Secondary).

4) School Community Relations.

5) Principalship (Secondary or Elementary School).

6) School Finance.

7) Twelve semester hours of electives in educational administration and instructional supervision from School Facilities; School Personnel Administration; Group Dynamics; Office and Business Management; Clinical Supervision or Internship or Practicum in Educational Administration or Instructional Supervision, Program Development and Evaluation (in professional education or areas outside professional education).

B. Twelve semester hours in professional education, to include the following:

1) Three semester hours of Educational Research.

2) Three semester hours of History or Philosophy of Education.

3) Six semester hours of curriculum (three semester hours at the elementary level and three semester hours at the secondary school level).

C. Six semester hours of electives from cognate fields outside professional education related to educational administration and supervision in business, political science, psychology, sociology, or speech.

5. Assistant superintendents who supervise any part of the instructional program are required to meet the same standards as superintendents.

6. Assistant superintendents for noninstructional areas\* shall be certified as a school superintendent or meet the following requirements:

A. A minimum of five years of demonstrated successful administrative experience at a managerial level in education and/or related fields, either in the public or private sector.

B. Possess an earned master's degree from a regionally accredited institution of higher education in either education administration, business administration, public administration, or a related area of study including, but not limited to, accounting, finance, banking, insurance and law.

The responsibilities assumed by this category of administrators must be related to noninstructional programs and the experience obtained while at that level may not be used for meeting the certification requirements for superintendent.

\*Noninstructional areas include finance, management, facilities planning, and ancillary programs.

7. A statement of eligibility for certification as a parish city school superintendent may be issued upon documentation and verification that the applicant meets the following criteria (Items a-d):

a) Hold an out-of-state teaching certificate with authorization to serve as a school superintendent.

b) Hold an earned master's degree from a regionally accredited institution of higher learning.

c) Have had five years of successful school experience as a superintendent, assistant superintendent, supervisor of instruction, principal, or assistant principal. The assistant principal experience would be limited to a maximum of two years of experience in that position.

d) Have had five years of successful teaching experience in a properly certified field.

A parish or city school superintendent ancillary certificate may be issued to an applicant who has met the requirements of Items G 1-4 above and who is employed to serve in this position in a Louisiana school system. The certificate is valid only for the period and place of employment.

For certain school districts, allowable circumstance for waiver of the school superintendent certification requirements are addressed in Bulletin 741, Louisiana Handbook for School Administrators.
--

### Education Leader Certificate-Level 3

All candidates must meet the following requirements in order to receive a five-year Level 3 Educational Leader Certificate to become a superintendent. The five-year



certification period is activated with the candidate's first full-time appointment as a Superintendent.

Candidates for initial Level 3 Educational Leader (Professional) Certification shall meet the following criteria:

1. Hold a valid Louisiana Level 2 Educational Leader Certificate.

2. Have had five years of successful administrative or management experience in education at the level of assistant principal or above. The assistant principal experience would be limited to a maximum of two years of experience in that position.

3. Earn a passing score on the School Superintendent Assessment (SSA), in keeping with state requirements.

Renewal Requirements:

Level 3 Educational Leaders must complete a minimum of 150 continuing learning units of professional development over a five-year time period that is consistent with the leader's Individual Professional Growth Plan (IPGP) and includes updating the educational leader portfolio.

\* \* \*

Interested persons may submit written comments until 4:30 p.m., January 9, 2005, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Bulletin 746 Louisiana Standards for State Certification of School Personnel Requirements for Certification as Superintendent, Ancillary Superintendent, and Education Leader 3**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This revision to the policy for certification as a Superintendent, Ancillary Superintendent, and Educational Leader 3 allows experience as an assistant principal to qualify for administrative experience. The assistant principal experience would be limited to a maximum of two years of experience in that position. 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  
0411#020

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

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

Bulletin 1943 Policies and Procedures for  
Louisiana Teacher Assistance and Assessment  
(LAC 28:XXXVII.2503)

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 1943 Policies and Procedures for Louisiana Teacher Assistance and Assessment* (LAC Part Number XXXVII). These changes to current Bulletin 1943 policy provide for administrative waivers related to two situations involving new teachers in their fourth semester of the LaTAAP. This applies to new teachers who successfully completed semester three of the LaTAAP and are moving to another state due to family re-employment or military assignment. This amended language streamlines current policy and aligns Bulletin 1943 policy with Blue Ribbon Commission Year One recommendations related to improving teacher quality in Louisiana.

#### **Title 28**

#### **EDUCATION**

#### **Part XXXVII. Bulletin 1943 Policies and Procedures for Louisiana Teacher Assistance and Assessment Chapter 25. Assessment Procedures §2503. Extenuating Circumstances in the Assessment Process**

A. When extenuating circumstances in the assessment process occur, the procedures outlined below shall be followed.

1. New teachers employed or unreported to the LDE by the LDE established dates shall not enter the first phase (initial support semester) of the assistance and assessment program until the following semester.

2. If a new teacher is employed and reported by the dates specified above, but is reassigned to a new school or a new subject/grade assignment after October 1 or February 1, the teacher shall not enter the first phase (initial support semester) of the assistance and assessment program until the following semester.

3. If a new teacher who has completed the first year of teaching is reassigned to a new school or a grade/subject greatly different from the previous assignment, the teacher may request in writing that the LEA and LDE defer assessment for one semester. A written response to the request must be delivered to the teacher within 10 working days from the date that the LEA and LDE receive the request. If the assessment is deferred, the new teacher shall be assessed the following semester.

4. If a new teacher does not complete either the initial support year or the assessment semester, the new teacher shall reenter that phase of the assessment program, i.e., either support or assessment, that was incomplete.

5. If a new teacher does not meet the assessment standards for certification at the end of the first assessment period, the teacher may request changes in the mentor and/or the assessment team for the second assessment period. The written request shall be submitted to both the principal and the LEA contact person.

6. If a new teacher has successfully completed semester three of the Louisiana Teacher Assistance and Assessment Program and will be moving to another state due to family re-employment or due to a military assignment, the teacher may request a waiver from the fourth semester of the Louisiana Teacher Assistance and Assessment Program. The written request shall be submitted to both the principal and the LEA contact person, with supporting documentation (e.g. verification from out-of-state employer or military orders). The LEA contact person will forward the teacher's waiver request to the LDE for approval.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 28:288 (February 2002), amended LR 31:

Interested persons may submit comments until 4:30 p.m., January 9, 2005, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 1943 Policies and Procedures  
for Louisiana Teacher Assistance and Assessment**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

These changes to current *Bulletin 1943* policy reflect extenuating circumstances changes needed to implement the LaTAAP. The changes include provisions to allow for administrative waivers related to two situations involving new teachers in their fourth semester of the LaTAAP. 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  
0411#019

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Ex Parte Communications (LAC 35:I.302)

The Louisiana State Racing Commission hereby gives notice that it intends to promulgate LAC 35:I.302. *Ex Parte* Communications. In furtherance of the statutory charges prescribed by the Louisiana Administrative Procedures Act and Open Meetings Law which govern commission hearings and practices, the commission promulgates this Rule to ensure the fair and impartial hearing on all matters pending before it. This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 35**

**HORSE RACING**

**Part I. General Provisions**

**Chapter 3. General Rules**

**§302. Ex Parte Communications**

A. Commissioners shall not communicate *ex parte* with any licensee, applicant for license, or licensee's representative on the merits of matters in which the commission may make findings of fact, conclusions of law or otherwise render a final agency decision, except upon notice and opportunity for all parties to participate. This Rule is not intended to prohibit communications relating to procedure, the disposition of *ex parte* matters, such as requests for hearing or on matters of regulatory policy not the subject of a pending adjudication.

B. Any member of the commission engaging in *ex parte* communications with any licensee, applicant for licensee, or licensee's representative on the merits of an adjudication pending before the commission shall withdraw from participating in any adjudicative hearing, discussion or deliberation on these matters. "Adjudication pending" shall mean any matter which has been the subject of a stewards' investigation, action or ruling brought before the commission as an appeal or by referral to be finally determined before judicial relief may be sought.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:960.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 31:

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, Executive Director, or C.A. Rieger, Assistant Director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule through December 10, 2004, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: *Ex Parte* Communications**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no anticipated costs or savings to state or local governmental units associated with this rule, other than one-time costs directly associated with its publication.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of local and state governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This action benefits horsemen by ensuring the fair and impartial hearing on all matters pending before the Commission.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated effect on competition and employment.

Charles A. Gardiner III  
Executive Director  
0411#002

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Racing Commissioners (LAC 46:XLI.Chapter 23)

The Louisiana State Racing Commission hereby gives notice that it intends to promulgate LAC 46:XLI.Chapter 23 "Racing Commissioners." In furtherance of the statutory charges prescribed by R.S. 4:144(B) (as amended by Act 328 of 2004), the commission promulgates this Rule to ensure the fair and impartial hearing on all matters pending before it. This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLI. Horseracing Occupations**

**Chapter 23. Racing Commissioners**

**§2301. Prohibitions**

A. No member of the Louisiana State Racing Commission shall be an official, member of any board of directors, or person financially interested in any racetrack or race meeting licensed by the commission. No member may directly or indirectly own race horses which participate in any race meeting licensed by the commission. However, nothing shall prohibit a member of the commission from owning a horse that sired or bred a racehorse that participates in a race meeting licensed by the commission, or from participating in a breeder or stallion award, provided the member does not have an ownership interest in the racehorse that competed in the race meeting at the time of the meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142, R.S. 4:144 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 31:

**§2303. Removal**

A. Any member of the commission violating R.S. 4:144(B)(2) or the foregoing Section shall, after verified complaint, investigation and resolution of the alleged violation, be removed from the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142, R.S. 4:144 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 31:

**§2305. Complaints**

A. Any person may file a written complaint alleging a prohibited violation which complaint shall be handled in the same manner as all other legal matters pursuant to R.S. 4:146(A).

B. In order for the written complaint to be considered, it must comply with the following:

1. it must be verified or notarized, subjecting such complainant to discipline for perjury under the rules and other applicable laws;

2. it must contain the full name, address and telephone number of the complainant;

3. it must clearly identify by name the commissioner who is alleged to have violated the rule or law, clearly identify the kind of alleged violation, and must state facts in detail and with particularity within the complainant's own knowledge of the substance of the alleged violation including date, time, place and circumstance of the violation;

4. it must identify by name and address all persons known to or believed by the complainant to have direct knowledge or information of the alleged violation, and provide a brief description of the knowledge or information; and

5. it must explain and attach all relevant documents which tend to establish the violation and which are available to the complainant at the time of making the complaint and to identify any other relevant documents known to exist which are unavailable to the complainant along with the name and address of the custodian of each such document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142, R.S. 4:144 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 31:

**§2307. Investigation**

A. Upon receipt, the complaint shall be immediately forwarded for handling and representation as all other legal matters in accordance with R.S. 4:147(A) after which a determination shall be made as to whether a valid complaint has been stated. The complainant shall be given written notice of any deficiencies in the complaint and be afforded an opportunity to correct any errors. Notice of receipt of a valid complaint shall be immediately forwarded to members of the commission.

B. The commissioner against whom the complaint is filed shall have 10 days after its receipt within which to either submit his/her resignation to the governor or to furnish a written response to the complaint. If the commissioner fails to timely furnish a written response, the chairman, or his designated vice-chair, shall immediately suspend such commissioner pending conclusion of the investigation,

which shall be immediately commenced. The governor shall be immediately notified of such action in writing.

C. Upon timely receipt of a written response to the complaint by the commissioner against whom the complaint is made, preliminary interviews shall be conducted within 10 days of the complainant filing the complaint and of the commissioner as well as other persons who may be reasonably interviewed and who have been identified as having knowledge of the matter. At the conclusion of the period for interviews, the commission shall be advised whether there is reasonable cause to believe that the commissioner has done some act which, if proved, would constitute a prohibited violation of the law or the rules of racing.

D. If a determination is made that there is no reasonable cause, no investigation shall be commenced unless and until a majority of the commission at the next regular or special meeting of the commission decide to commence an investigation. If a determination is made that there is reasonable cause, an investigation shall be commenced until a majority of the commission at a regular or special meeting of the commission decide to terminate the investigation. Upon commencement of an investigation, the chairman, or his designated vice-chair, shall suspend the commissioner pending conclusion of the investigation. The governor and all other members of the commission shall be immediately notified of such action in writing.

E. The investigation shall be concluded within 30 days of its commencement, except upon a showing of good cause which is authorized by the chairman, or his designated vice-chair. At the conclusion of the investigation a written report and recommendation shall be filed which includes suggested findings of fact and conclusions of law, to the commission, to the suspended commissioner, and to the complainant. Within ten days the suspended commissioner and the complainant may file written objections with the commission to the report and recommendation. At the next regular or special meeting of the commission following receipt of the report and recommendation and the expiration for the time to file written objections, the commission shall conduct a public hearing on whether to accept or reject the report and recommendations. If any written objection is filed, the suspended commissioner and the complainant may each be represented by counsel at the public hearing and participate, in calling and cross-examining witnesses and arguing the merits. If no objection is timely filed, the commission may at the public hearing accept and adopt the report and recommendations.

F. At the conclusion of the public hearing, a resolution to immediately remove the suspended commissioner shall require a vote of two-thirds of the members present and voting. There shall be no reconsideration of the resolution. There shall be no appeal to any court nor any judicial review of the resolution or the removal. Any member so removed shall not be eligible for reappointment as a commissioner for a period of five years. The governor and the Secretary of State shall be notified of the removal of the commissioner, the reasons therefor, and of the legal impediment to reappointment.

G. If at the conclusion of the public hearing there is no resolution offered to remove the commissioner or if one is offered but is unsuccessful, then the chairman, or his

designated vice-chair, shall on behalf of the commission terminate the suspension of the commissioner. There shall be no appeal to any court nor any judicial review of the termination of the suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142, R.S. 4:144 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 31:

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, Executive Director, or C. A. Rieger, Assistant Director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule through December 10, 2004, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Racing Commissioners**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated costs or savings to state or local governmental units associated with this rule, other than one-time costs directly associated with its publication.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of local and state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action benefits horsemen by ensuring the fair and impartial hearing on all matters pending before the Commission, and complies with Act No. 328 of 2004, wherein Commissioners are prohibited from having a financial interest in a track licensed by the Commission, or owning directly or indirectly any race horse racing in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Charles A. Gardiner III  
Executive Director  
0411#001

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Children's Respite Care Centers Licensing  
(LAC 48:I.Chapter 80)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby proposes to adopt LAC 48:I.Chapter 80 in the Medical Assistance Program as authorized by R.S. 40:2175.11-2175.15. This proposed Rule is promulgated in

accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 571 of the 2003 Regular Session of the Louisiana Legislature, authorized the Department of Health and Hospitals to promulgate rules addressing the Minimum Licensing Standards for Children's Respite Care Centers (CCRCs). In compliance with Act 571, the department proposes to adopt the following licensing standards for all CCRCs in the State of Louisiana.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972 as families with children who have life-limiting illnesses will receive additional support.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby adopts the following licensing standards for children's respite care centers.

#### **Title 48**

### **PUBLIC HEALTH**

#### **Part I. General Administration**

##### **Subpart 3. Health Standards**

#### **Chapter 80. Children's Respite Care Centers**

##### **Subchapter A. General Provisions**

##### **§8001. Definitions**

*Activities of Daily Living (ADL's)* The following functions or tasks performed either independently or with supervision or assistance:

1. mobility;
2. transferring;
3. walking;
4. grooming;
5. bathing;
6. dressing and undressing;
7. eating;
8. toileting.

*Advance Directives* An instruction given to the patient's family (see definition of family) such as a durable power of attorney for health care, a directive pursuant to patient self-determination initiatives, a living will, or an oral directive which either states a person's choices for medical treatment, or in the event the person is unable to make treatment choices, designates who shall make those decisions.

*Attending/Primary Physician* A person who is a doctor of medicine or osteopathy fully licensed to practice medicine in the state of Louisiana, who is designated by the patient as the physician responsible for his/her medical care.

*Bereavement Services* Organized services provided under the supervision of a qualified professional to help the family cope with death related grief and loss issues. This is to be provided for at least one year following the death of the patient.

*Branch* A location or site from which a children's respite care center (CRCC) agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the parent CRCC agency and is located within a 50-mile radius of the parent agency and shares administration and supervision.

*Bureau* The Bureau of Health Services Financing of the Department of Health and Hospitals.

*Care Giver* The person whom the patient designates to provide his/her emotional support and/or physical care.

*Children's Respite Care Center (CRCC)* An autonomous, centrally administered, pediatric medical respite program providing a continuum of home, outpatient, and homelike inpatient care for children living with life-limiting illnesses and their families. The CRCC employs an interdisciplinary team to assist in providing palliative and supportive care combined with curative treatment to meet the special needs arising out of physical, emotional, spiritual, social, and economic stresses experienced during life-limiting illnesses as well as during dying and bereavement if a cure is not attained.

*Contracted Services* Services provided to a CRCC provider or its patients by a third party under a legally binding agreement that defines the roles and responsibilities of the CRCC and service provider.

*Core Services* Medical respite program services, nursing services, physician services, social work services, counseling services, including bereavement counseling, pastoral counseling, and any other counseling services provided to meet the needs of the individual and family, and support services including trained volunteers. These services must be provided by employees of the CRCC, through contracted services and/or volunteers.

*CRCC Premises* The physical site where the CRCC maintains staff to perform administrative functions, maintains personnel records, maintains client service records, provides a homelike environment for inpatient respite care, and holds itself out to the public as being a location for receipt of client referrals.

*CRCC Services* A coordinated program of a continuum of care to children with life-threatening conditions, their families and caregivers, which allows access to palliative care while continuing with aggressive and curative treatment from the time of admission through bereavement, in the child's home, at the CRCC, and/or in medical facilities.

*Department* The Department of Health and Hospitals (DHH).

*Discharge* The point at which the patient's active involvement with the CRCC program is ended and the program no longer has active responsibility for the care of the patient.

*Do Not Resuscitate Orders* Orders written by the patient's physician which stipulate that in the event the patient has a cardiac or respiratory arrest, no cardiopulmonary resuscitation will be initiated or carried out.

*Emotional Support* Counseling provided to assist the individual and/or family in coping with stress, grief, and loss.

*Employee* An individual whom the CRCC pays directly for services performed on an hourly or per visit basis and the CRCC is required to issue a form W-2 on his/her behalf. If a contracting service or another agency pays the individual, and is required to issue a form W-2 on the individual's behalf, or the individual is self-employed, the individual is not considered a CRCC employee. An individual is also considered a CRCC employee if the individual is a volunteer under the jurisdiction of the CRCC.

*Family* A group of two or more individuals related by ties of blood, legal status, or affection who consider themselves a family.

**Geographic Area**—the area around the location of a licensed agency which is within a 50-mile radius of the agency premises. Each CRCC must designate the geographic area in which the agency will provide services.

**Governing Body**—the person or group of persons that assumes full legal responsibility for determining, implementing and monitoring policies governing the CRCC's total operation. The governing body must designate an individual who is responsible for the day-to-day management of the CRCC program, and must also insure that all services provided are consistent with accepted standards of practice. Written minutes and attendance of governing body meetings are to be maintained.

**Home**—a person's place of residence.

**Informed Consent**—a documented process in which information regarding the potential and actual benefits and risks of a given procedure or program of care is exchanged between provider and patient/family.

**Inpatient Services**—care available for treatment, pain control, symptom management and/or respite purposes that are provided in a participating facility.

**Interdisciplinary Team (IDT)**—an interdisciplinary group designated by the CRCC, composed of representatives from all the core services. The IDT must include at least a doctor of medicine or osteopathy, a registered nurse, a social worker, and a pastoral or other counselor. The *interdisciplinary team* is responsible for:

1. participation in the establishment of the plan of care;
2. provision or supervision of CRCC care and services;
3. periodic review and updating of the plan of care for each individual receiving CRCC care; and
4. establishment of policies governing the day-to-day provision of CRCC care and services.

**License (CRCC)**—a document permitting an organization to provide children's respite care for a specific period of time under the rules or policies set forth by the state of Louisiana.

**Life-Limiting Illness**—a medical prognosis of limited expected survival because of ailment, illness, disease, or misfortune including, but not limited to:

1. injury;
2. accident;
3. cancer;
4. heart disease; and
5. congenital and chronic obstructive pulmonary disease.

**Medical Director**—a person who is a doctor of medicine or osteopathy, currently and legally authorized to practice medicine in the state of Louisiana who will:

1. serve as a consultant to the interdisciplinary team;
2. write orders in the event of an emergency in which the child's primary physician cannot be reached; and
3. attend monthly IDT meetings.

**Medical Respite Care**—the temporary care and supervision of a child living with a life-limiting illness so that the primary caregiver can be relieved of such duties. Such services may be performed in the home of the child or in a facility owned or leased by the children's respite care center.

**Medical Social Services**—includes:

1. a comprehensive psychosocial assessment;
2. ongoing support for the patient and family; and

3. assistance with coping skills, anticipatory grief, and grief reactions.

**Non-Core Services**—services provided directly by the CRCC employees, under arrangement, or through referral which include, but are not limited to:

1. home health aide;
2. physical therapy services;
3. occupational therapy services;
4. speech-language pathology services;
5. in-patient care for pain control and symptom management and respite purposes; and
6. medical supplies and appliances, including drugs and biologicals.

**Palliative Care**—the reduction or abatement of pain or other troubling symptoms by appropriate coordination of the interdisciplinary team required to achieve needed relief of distress.

**Pastoral Services**—providing the availability of clergy as needed to address the patient's/family's spiritual needs and concerns.

**Pediatric**—birth through age 20.

**Plan of Care (POC)**—a written document established and maintained for each individual admitted to a CRCC program. Care provided to an individual must be in accordance with the plan. The plan includes an assessment of the individual's needs and identification of the services including the management of discomfort and symptom relief.

**Representative**—a person authorized under state law to act on behalf of an individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8003. Licensing**

A. An application packet shall be obtained from the Department of Health and Hospitals (department or DHH). A completed application packet for a CRCC facility shall be submitted to and approved by DHH prior to an agency providing CRCC services.

B. It shall be unlawful to operate or maintain a CRCC without first obtaining a license from the department. The Department of Health and Hospitals is the only licensing agency for CRCC in the state of Louisiana.

C. A separately licensed CRCC shall not use a name which is substantially the same as the name of another CRCC licensed by the department unless the agency is part of a corporation or is chain affiliated.

D. The licensing agency shall have authority to issue two licenses as described below.

1. Full license is issued only to those agencies that are in substantial compliance with all applicable federal, state, and local laws, regulations, and policies. The license shall be valid until the expiration date shown on the license.

2. Provisional license is issued to those existing licensed agencies which do not meet the criteria for full licensure. The license shall be valid for six months or until the termination date stated on such license.

- a. An agency with a provisional license may be issued a full license if at the follow-up survey the agency has corrected the violations. A full license will be issued for the

remainder of the year until the CRCC's license anniversary date.

b. DHH may re-issue a provisional license or initiate licensing revocation of a provisional license when the CRCC fails to correct violations within 60 days of being cited, or at the time of the follow-up survey, whichever occurs first.

c. A provisional license may be issued by DHH for the following nonexclusive reasons:

i. the agency has more than five violations of CRCC regulations during one survey;

ii. the agency has more than three valid complaints in a one-year period;

iii. there is a documented incident that places a patient at risk;

iv. the agency fails to correct violations within 60 days of being cited, or at the time of a follow-up survey, whichever occurs first;

v. the agency has an inadequate referral base, other than at the time of the initial survey for licensure, has less than 10 new patients admitted since the last annual survey;

vi. the agency fails to submit assessed fees after notification by DHH; or

vii. there is documented evidence that the agency has bribed, or harassed any person to use the services of any particular CRCC agency.

E. The current license shall be displayed in a conspicuous place inside the CRCC program office at all times. A license shall be valid only in the possession of the CRCC to which it is issued and for only that particular physical address. A license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary. A license shall not be valid for any CRCC other than the CRCC for which originally issued.

F. All requirements of the application process shall be completed by the applicant before the application will be processed by DHH. No application will be reviewed until payment of the application fee.

1. The applicant, with the exception of the demonstration model, must become fully operational and prepared for an initial survey within 90 days after payment of the application fee. If the agency is unable to do so, the application shall be considered closed and the agency shall be required to submit a new application packet, including fees.

2. An initial applicant shall, as a condition of licensure, submit:

a. a complete and accurate CRCC application packet. (This packet shall be purchased from DHH which contains the forms required for initial CRCC licensure. The fee for this packet shall be set by DHH.) The physical address provided on the application must be the physical address from which the agency will be operating;

b. current licensing fee (as established by statute) by certified check, company check, or money order;

c. documentation of qualifications for the administrator and director of nursing. Any changes in the individuals designated or in their qualifications must be submitted to and approved by DHH prior to the initial survey;

d. disclosure of any financial and/or familial relationship with any other entity receiving third party payor funds, or any entity which has previously been licensed in Louisiana;

e. approval for occupancy from the Office of the State Fire Marshal;

f. approval of plan review from the DHH's Division of Engineering and Architectural Services;

g. a recommendation for licensure from the Office of Public Health.

G. All CRCCs required to be licensed by the law shall comply with the rules, established fire protection standards, and enforcement policies as promulgated by the Office of State Fire Marshal. It shall be the primary responsibility of the Office of State Fire Marshal to determine if applicants are complying with those requirements. No license shall be issued or renewed without the applicant furnishing a certificate from the Office of State Fire Marshal stating that the applicant is complying with their provisions. A provisional license may be issued to the applicant if the Office of State Fire Marshal issues the applicant a conditional certificate.

H. All CRCCs required to be licensed by the law shall comply with the applicable rules and regulations contained in the Louisiana State Sanitary Code [Title 51 of the *Louisiana Administrative Code* (LAC 51)] as promulgated by the Office of Public Health. It shall be the primary responsibility of the Office of Public Health to determine if applicants are complying with those requirements. If a nursing facility published rule conflicts with this Chapter 80, the stricter of the two rules shall govern. No initial license shall be issued without the applicant furnishing a copy of the LHS-48 (Institution Report) form from the Office of Public Health stating that the applicant is complying with their provisions and is recommended for licensure. A provisional license may be issued to the applicant if the Office of Public Health issues the applicant a conditional certificate.

I. Construction documents (plans and specifications) are required to be submitted and approved by the Louisiana State Fire Marshal, the DHH's Division of Engineering and Architectural Services, and the Office of Public Health as a part of the licensing procedure and prior to obtaining a license.

#### 1. Submission of Plans

a. The following documents shall be submitted for review and approval prior to construction:

i. one set of the final construction documents shall be submitted to the Louisiana State Fire Marshal for approval. The Fire Marshal's letter of approval and final inspection shall be sent to DHH's Division of Engineering and Architectural Services;

ii. one set of the final construction documents (plans and specifications) shall be submitted to the Louisiana Department of Health and Hospitals, Division of Engineering and Architectural Services, along with the appropriate review fee, and a plan review application form for approval; and

iii. one set of the final construction documents (plans and specifications) shall be submitted to the Office of Public Health for any ancillary facilities associated with the project including, but not limited to, plans and specifications for any food service facilities, swimming/treatment pools,

water supply system (such as a facility's own water well/surface water treatment plant), or sewerage disposal system (such as the facility's own sewage treatment plant). Such plans and specifications shall be accompanied by a completed cover sheet which identifies the type of facility for which a license is to be applied for along with any of the proposed project's ancillary facilities. This Section shall not be interpreted to preclude the possibility of the necessity for the applicant to submit additional plans and specifications which may be required by the Office of Public Health.

b. Applicable Projects. Construction documents (plans and specifications) are required to be approved for the following type projects:

- i. new construction;
- ii. new CRCCs; or
- iii. major alterations/substantial renovations.

c. The project shall be designed in accordance with the following criteria:

i. current Edition of *Guidelines for Design and Construction of Hospital and Health Care Facilities*, published by the American Institute of Architects, 1735 New York Ave., NW, Washington, D. C. 20006-5292 (Internet URL address: <http://www.aia.org/>);

ii. current edition of *NFPA 101 Life Safety Code*, published by the National Fire Protection Association, 1 Batterymarch, Quincy, MA 02169-7471 (Internet URS address: <http://www.nfpa.org/>);

iii. Part XIV (Plumbing) of the Louisiana State Sanitary Code (LAC 51:XIV);

iv. current edition of the Americans with Disabilities Act – Accessibility Guidelines for Buildings and Facilities (ADAAG);

v. the current Louisiana Department of Health and Hospitals licensing standards for children's respite care centers (LAC 48:I.Chapter 80); and

vi. applicable provisions of the Louisiana State Sanitary Code (LAC 51).

d. Preparation of Construction Documents. Construction documents (plans and specifications) for submission to the Louisiana Department of Health and Hospitals shall be prepared only by a Louisiana licensed architect or qualified licensed engineer as governed by the licensing laws of the state of Louisiana for the type of work to be performed. Construction documents submitted shall be of an architectural or engineering nature, and thoroughly illustrate the project through accurately drawn, dimensioned, and noted plans, details, schedules, and specifications. At a minimum, the following shall be submitted:

- i. site plan(s);
- ii. floor plan(s). These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler, and fire alarm plans;
- iii. building elevations;
- iv. room finish, door, and window schedules;
- v. details pertaining to Americans with Disabilities Act (ADA) requirements;
- vi. specifications for materials; and
- vii. an additional set of basic preliminary type, legible site plan and floor plans in either 8-1/2" x 11"; 8-1/2" x 14"; or 11" x 17" format. (These are for use by DHH in doing the final inspection of the facility and should include legible room names).

## 2. Approval of Plans

a. Notice of satisfactory review from DHH's Division of Engineering and Architectural Services, the Office of State Fire Marshal, and the Office of Public Health constitutes compliance with this requirement if construction begins within 180 days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, ordinances, codes or rules of any responsible agency.

b. In the event that submitted materials do not appear to satisfactorily comply with all design criteria, the Department of Health and Hospitals, Division of Engineering and Architectural Services and/or the Office of Public Health shall furnish a letter to the party submitting the application for review, which lists the particular items in question and request further explanation and/or confirmation of necessary modifications.

## 3. Waivers

a. The secretary of the department may, within his sole discretion, grant waivers to building and construction guidelines which are not otherwise required under the provisions of the Louisiana State Sanitary Code. The facility must submit a waiver request in writing to the Division of Engineering and Architectural Services. The facility shall demonstrate how patient safety and the quality of care offered are not compromised by the waiver. The facility must demonstrate their ability to completely fulfill all other requirements of the waiver. The department will make a written determination of the request. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances related to the waiver.

b. The secretary, in exercising his discretion, must at a minimum, require the applicant to comply with the edition of the building and construction guidelines which immediately preceded the 2001 edition of the *Guidelines for Design and Construction Hospital and Health Care Facilities*.

c. The state health officer of the department may, within his sole discretion, grant waivers to building and construction guidelines which are required under the provisions of the Louisiana State Sanitary Code. The facility must submit a waiver request in writing to the state health officer. The facility shall demonstrate how public health and the quality of care offered are not compromised by the waiver. The facility must demonstrate their ability to completely fulfill all other requirements of the waiver. The state health officer will make a written determination of the request. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances related to the waiver.

J. An applicant may be denied a license for the following reasons:

1. failure to comply with applicable federal, state, and local laws;
2. failure to complete the application process;
3. conviction of a felony by the following, as shown by a certified copy of the record of the court of the conviction:
  - a. owner;
  - b. administrator;



- c. director of nursing;
- d. members or officers, or the person(s) designated to manage or supervise the CRCC if the applicant is a firm or corporation.

#### K. Physical Environment

1. Equipment and furnishings in a CRCC facility shall provide for the health care needs of the resident while providing a home-like atmosphere.

2. The CRCC facility shall design and equip areas for the comfort and privacy of patients and family members. The facility shall have:

- a. physical space for private patient/family visiting;
- b. accommodations for family members to remain with the patient throughout the night;
- c. accommodations for family privacy after a patient's death; and
- d. decor which is homelike in design and function.

3. Patient rooms shall be designed and equipped for adequate nursing care and the comfort and privacy of patients. Each patient's room shall:

- a. be equipped with toilet and bathing facilities;
- b. be equipped with a lavatory in each patient's room;
- c. be at or above grade level;
- d. contain room décor that is homelike and noninstitutional in design and function. Room furnishings for each patient shall include a bed with side rails, a bedside stand, an over-the-bed table, and individual reading light easily accessible to each patient, and a comfortable chair. The patient shall be permitted to bring personal items of furniture or furnishing into their rooms, unless medically inappropriate;
- e. have closet space that provides security and privacy for clothing and personal belongings;
- f. contain no more than two patient beds;
- g. measure at least 100 square feet for a single patient room or 80 square feet for each patient for a multi patient room;
- h. be equipped with a device for calling the staff member on duty. A call bell or other communication mechanism shall be placed within easy reach of the patient and shall be functioning properly. A call bell shall be provided in each patient's toilet, bath, and shower room; and
- i. all patient rooms shall be outside rooms with a window of clear glass of not less than 12 square feet.

4. Water Temperature. The CRCC facility shall:

- a. provide an adequate supply of hot water at all times for patient use;
- b. have plumbing fixtures with a scald preventative valve of the pressure balancing, thermostatic, or combination mixing valve type that automatically regulates the temperature of the hot water used by patients to a maximum of 120°F; and
- c. designate a staff member responsible for monitoring and logging water temperatures at least monthly. This person is responsible for reporting any problems to the administrator.

5. Linen Supply

- a. The CRCC facility shall have available at all times a quantity of linen essential for proper care and comfort of patients. Linens shall be handled, stored, processed, and transported in such a manner as to prevent

the spread of infection. The facility shall have a clean linen storage area.

b. The linen supply shall at all times be adequate to accommodate the number of beds and the number of incontinent patients.

c. Soiled linen and clothing shall be collected and enclosed in suitable bags or containers (covered carts or receptacles) and stored in a well ventilated area. Soiled linen shall not be permitted to accumulate in the facility.

d. The CRCC facility shall have policies and procedures that address:

- i. frequency of linen changes;
- ii. storage of clean linen; and
- iii. storage of soiled linen.

6. The CRCC facility shall make provisions for isolating patients with infectious diseases. The CRCC should institute the most current recommendations of the Centers for Disease Control and Prevention (CDC) relative to the specific infection(s) and communicable disease(s). The CRCC facility shall isolate infected patients only to the degree needed to isolate the infecting organism. The method shall be the least restrictive possible while maintaining the integrity of the process and the dignity of the patient. The CRCC facility provisions for isolating patients with infectious diseases shall include:

- a. definition of nosocomial infections and communicable diseases;
- b. measures for assessing and identifying patients and health care workers at risk for infections and communicable diseases;
- c. measures for prevention of infections, especially those associated with immunosuppressed patients and other factors which compromise a patient's resistance to infection;
- d. measures for prevention of communicable disease outbreaks;
- e. provision of a safe environment consistent with the current CDC recommendations for identified infection and/or communicable disease;
- f. isolation procedures and requirements for infected or immunosuppressed patients;
- g. use and techniques for universal precautions;
- h. methods for monitoring and evaluating practice of asepsis;
  - i. care of contaminated laundry, i.e., covered containers or receptacles, clearly marked bags and separate handling procedures;
  - j. care of dishes and utensils, i.e., clearly marked and handled separately;
  - k. use of any necessary gowns, gloves, or masks posted and observed by staff, visitors, and anyone else in contact with the patient;
  - l. techniques for hand washing, respiratory protection, asepsis sterilization, disinfection, needle disposal, solid waste disposal, as well as any other means for limiting the spread of contagion;
  - m. orientation of all CRCC personnel to the infection control program, and to communicable diseases;
  - n. employee health policies regarding infectious diseases. When infected or ill, employees shall not render direct patient care; and

7. The CRCC facility shall provide:

- a. storage for administrative supplies;

b. hand washing facilities provided with hot and cold water, hand soap, and paper towels located convenient to each nurse's station and drug distribution station;

c. charting facilities for staff at each nurse's station;

d. a clean workroom which contains a work counter, sink with hot and cold water, storage facilities and covered waste receptacles;

e. a soiled workroom which contains a sink with hot and cold water and other facilities necessary for the receiving and cleanup of soiled equipment;

f. parking for stretchers and wheelchairs in an area out of the path of normal traffic and of adequate size for the facility;

g. a janitor's closet equipped with a floor drain and hot and cold water as well as mop hooks over the sink and storage space for housekeeping equipment and supplies;

h. a suitable multi-purpose lounge or lounges furnished for reception, recreation, dining, visitation, group social activities and worship. Such lounge or lounges shall be located convenient to the patient rooms designed to be served;

i. a conference and consultation room suitable and furnished for family privacy, clergy visitation, counseling, and viewing of a deceased patient's body during bereavement. The conference and consultation room shall be located convenient to the patient rooms it is designed to serve;

j. public telephone; and

k. public restrooms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8005. Survey**

A. A survey shall be an on-site visit conducted to assure compliance with CRCC licensing standards. Home visits may be conducted as part of the survey to ascertain compliance.

##### **B. Types of Survey**

1. Initial Survey. After approval of the application by DHH, the CRCC must become fully operational, in substantial compliance with applicable federal, state, and local laws, and providing care to two and only two patients at the time of the initial survey. No inpatients shall be admitted until the initial on-site survey has been performed. The initial on-site survey shall be scheduled after the agency notifies the department that the agency is fully operational and providing services. If, at the initial licensing survey, an agency has violations of licensing standards which are determined to be of such a serious nature that they may cause or have the potential to cause actual harm, DHH may deny licensing.

2. Licensing Survey. A licensing survey is an unannounced on-site visit periodically conducted to assure compliance with CRCC licensing standards.

3. Follow-up Survey. An on-site follow-up may be conducted whenever necessary to assure correction of violations. When applicable, DHH may clear violations at exit interview and/or by mail.

4. Complaint Survey. A complaint survey shall be conducted to investigate allegations of noncompliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8007. License Renewal Process**

A. A CRCC license must be renewed annually.

B. An agency seeking a renewal of its CRCC license shall:

1. request a renewal packet from the bureau if one is not received at least 45 days prior to license expiration;

2. complete all forms and return to the bureau at least 30 days prior to license expiration; and

3. submit the current annual licensing fees with the packet. An application is not considered to have been submitted unless the licensing fees are received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8009. Fees**

A. Any remittance submitted to DHH in payment of a required fee must be in the form of a company or certified check or money order made payable to the Department of Health and Hospitals.

B. Fee amounts shall be determined by DHH.

C. Fees paid to DHH are not refundable.

D. A fee is required to be submitted with the following:

1. an initial application;

2. a renewal application;

3. a change of controlling ownership; and

4. a change of name or physical address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8011. Changes**

A. The Department of Health and Hospitals shall be notified, in writing, of any of the following within five working days of the occurrence:

1. change in physical address. (An agency must notify and receive approval from DHH prior to a change of physical address);

2. change of agency name;

3. change of phone number;

4. change of hours of operation/24 hour contact procedure;

5. change of ownership (controlling);

6. change in address or phone number of any branch office;

7. change of administrator (completed Key Personnel Change form, obtained from DHH, is required); and

8. change of director of nursing (completed Key Personnel Change form required); or

9. cessation of business.

##### **B. Change of Ownership**

1. Change of Ownership (CHOW) packets may be obtained from DHH. Only an agency with a full license shall be approved to undergo a change of ownership. A CRCC license is not transferable from one entity or owner to another.

2. The following must be submitted within five working days after the act of sale:

a. a new license application and the current licensing fee. The purchaser of the agency must meet all criteria required for initial licensure for CRCC;

b. any changes in the name and/or address of the CRCC;

c. any changes in administrative personnel (DON, administrator, medical director);

d. disclosure of ownership forms;

e. a copy of the Bill of Sale and Articles of Incorporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8013. Revocation or Denial of Renewal of License**

A. The secretary of DHH may deny an application for a license, or refuse to renew a license or revoke a license in accordance with the Administrative Procedure Act. An agency's license may not be renewed and/or may be revoked for any of the following:

1. failure to be in substantial compliance with the CRCC minimum standards;

2. failure to uphold patient rights whereby violations may result in harm or injury;

3. failure of the agency to protect patients/persons in the community from harmful actions of the agency employees; including, but not limited to:

a. health and safety;

b. coercion;

c. threat;

d. intimidation; and

e. harassment;

4. failure to notify proper authorities of all suspected cases of neglect, criminal activity, or mental or physical abuse which could potentially cause harm to the patient;

5. failure to maintain staff adequate to provide necessary services to current active patients;

6. failure to employ qualified personnel;

7. failure to remain fully operational at any time for any reason other than a disaster;

8. failure to submit fees including, but not limited to:

a. annual fee;

b. renewal fee;

c. provisional follow-up fee; or

d. change of agency address or name; or

e. any fines assessed by DHH;

9. failure to allow entry to CRCC or access to any requested records during any survey;

10. failure to protect patients from unsafe, skilled and/or unskilled care by any person employed by CRCC;

11. failure of CRCC to correct violations after being issued a provisional license;

12. agency staff or owner has knowingly, or with reason to know, made a false statement of a material fact in:

a. application for licensure;

b. data forms;

c. clinical records;

d. matters under investigations by the Department;

e. information submitted for reimbursement from any payment source;

f. the use of false, fraudulent or misleading advertising;

g. agency staff misrepresented or was fraudulent in conducting CRCC business; or

h. convictions of a felony by an owner, administrator, director of nursing or medical director as shown by a certified copy of the record of the court of conviction; or if the applicant is a firm or corporation, of any of its members or officers, or of the person designated to manage or supervise the CRCC agency; or

13. failure to comply with all reporting requirements in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8015. Notice and Appeal**

A. Notice shall be given in accordance with the current state statutes.

B. Administrative Reconsideration. The CRCC agency may request an administrative reconsideration of the violation(s) which support the department's actions. This is an informal process and reconsideration shall be conducted by a designated official(s) of the Department who did not participate in the initial decision to impose the actions taken. Reconsideration shall be made solely on the basis of documents and/or oral presentations placed before the official and shall include the survey report and statement of violations and all documentation the CRCC submits to the department at the time of the agency's request for reconsideration. Correction of a violation shall not be a basis for reconsideration and a hearing shall not be held. Oral presentations can be made by the department's spokesperson(s) and the CRCC's spokesperson(s). This process is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal. The designated official shall have the authority only to affirm the decision, to revoke the decision, to affirm part and revoke part, or to request additional information from either the department or the CRCC.

C. Administrative Appeal Process. Upon refusal of DHH to grant a license as provided in the current state statutes, or upon revocation or suspension of a license, or the imposition of a fine, the agency, institution, corporation, person, or other group affected by such action shall have the right to appeal such action by submitting a written request to the secretary of the department within 30 days after receipt of the notification of the refusal, revocation, suspension of a license, or imposition of a fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **Subchapter B. Core Services**

#### **§8021. Core Services**

A. Core services may be provided by employees of the CRCC or on a contractual basis. The CRCC is responsible for all actions of the contract personnel.

B. The CRCC must provide the following core services:

1. medical respite program services;

2. nursing services;

3. physician services;
4. social work services;
5. counseling services; and
6. support services, including trained volunteers and bereavement and pastoral care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **Subchapter C. Personnel**

#### **§8027. Administrator**

A. The administrator is a person who is designated, in writing, by the governing body as administratively responsible for all aspects of CRCC operations. When the administrator serves more than one licensed agency, he/she shall designate, in writing, an alternate to serve as administrator for each site where he/she is not physically housed continuously. The alternate shall be a full-time, on-site employee of the CRCC and shall meet the same qualifications as the administrator. The administrator and the director of nurses/alternates may be the same individual if that individual is dually qualified. An administrator serving as director of nurses, while employed by the CRCC, may not be employed by any other licensed health care agency.

1. An administrator must be a licensed physician, a licensed registered nurse, a social worker with a master's degree, or a college graduate with a bachelor's degree. An administrator shall have at least three years of documented management experience in a health care service delivery.

2. The administrator shall be responsible for compliance with all regulations, laws, policies and procedures applicable to the CRCC facility specifically and to Medicare/Medicaid issues when applicable. The administrator shall:

- a. implement personnel and employment policies to assure that only qualified personnel are hired. Licensure and/or certification (as required by law) shall be verified prior to employment and annually thereafter and records shall be maintained to support competency of all allied health personnel;
- b. implement policies and procedures that establish and support quality patient care, cost control, and mechanisms for disciplinary action for infractions;
- c. ensure the CRCC employs qualified individuals;
- d. be on-site during business hours or immediately available by telecommunications when off-site conducting the business of the CRCC, and available after hours as needed;
- e. be responsible for and direct the day-to-day operations of the CRCC facility;
- f. act as liaison among staff, patients and the governing board;
- g. ensure that all services are correctly billed to the proper payer source;
- h. designate, in writing, an individual who meets the administrator qualifications to assume the authority and the control of the CRCC if the administrator is unavailable; and
- i. designate in advance the IDT he/she chooses to establish policies governing the day-to-day provisions of the CRCC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8029. Counselor-Bereavement**

A. The bereavement counselor shall have documented evidence of appropriate training and experience in the care of the bereaved, received under the supervision of a qualified professional. The counselor shall implement bereavement counseling in a manner consistent with standards of practice and CRCC policy. Services include, but are not limited to:

1. assessment of grief counseling needs;
2. providing bereavement information and referral services to the bereaved, as needed, in accordance with the POC;
3. providing bereavement support to the CRCC staff as needed;
4. attending CRCC end of life IDT meetings; and
5. documenting bereavement services provided and progress of bereaved on clinical progress notes to be incorporated in the clinical record within one week of the visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8031. Counselor-Pastoral**

A. The pastoral counselor shall have documented evidence of appropriate training and skills to provide spiritual counseling, such as Bachelor of Divinity, Master of Divinity or equivalent theological degree or training. The counselor shall provide pastoral counseling based on the initial and ongoing assessment of spiritual needs of the patient/family, in a manner consistent with standards of practice including, but not limited to:

1. serving as a liaison and support to community chaplains and/or pastoral counselors;
2. providing consultation, support, and education to the IDT members on spiritual care;
3. attending IDT meetings; and
4. documenting pastoral services provided on clinical progress notes to be incorporated in the clinical record within one week of the visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8033. Dietician**

A. The dietician shall be a registered dietician or a person who meets the qualification standards of the Commission on Dietetic Registration of the American Dietetic Association. The dietician shall implement dietary services consistent with standards of practice including, but not limited to:

1. clinical progress notes, including the nutritional status of the patient, are to be incorporated into the clinical records within one week of the visit;
2. collaborate with the patient/family, physician, registered nurse and/or the IDT in providing dietary counseling to the patient/family;

3. instruct patient/family and/or CRCC staff as needed;

4. evaluate patient socioeconomic factors to develop recommendations concerning food purchasing, preparation and storage;

5. evaluate food preparation methods to ensure nutritive value is conserved, flavor, texture and temperature principles are adhered to in meeting the individual patient's needs; and

6. participate in IDT conference as needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8035. Dietary Manager**

A. A dietary manager shall meet one of the following:

1. be a graduate of a dietetic technician or dietetic assistant training program, approved by the American Dietetic Association, by correspondence or classroom;

2. be a graduate of a state-approved course that provides 90 or more hours of classroom instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietitian; or

3. have training and experience in food service supervision and management in the military service, equivalent in content to a dietetic technician or dietetic assistant training program, approved by the American Dietetic Association, by correspondence or classroom.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8037. Director of Nurses**

A. The director of nurses (DON) shall be designated, in writing, by the governing body to supervise all aspects of patient care, all activities of professional staff and allied health personnel, and responsible for compliance with regulatory requirements. The DON, or alternate, shall be on site or immediately available to be on site at all times during operating hours, and additionally as needed. If the DON is unavailable he/she shall designate a registered nurse to be responsible during his/her absence.

B. The director of nurses shall be a registered nurse and must be currently licensed to practice in the state of Louisiana:

1. with at least three years experience as a registered nurse. One of these years shall consist of full-time experience in providing direct patient care in a hospice, home health, pediatric, oncology, or CCRC setting; and

2. be a full-time employee of only one CRCC facility. The director of nurses is prohibited from simultaneous/concurrent employment.

C. The director of nursing shall supervise all patient care activities to assure compliance with current standards of accepted nursing and medical practice including, but not limited to the following:

1. the POC;

2. supervise employee health program, implement policies and procedures that establish and support quality patient care;

3. assure compliance with local, state, and federal laws, and promote health and safety of employees, patients and the community, using the following nonexclusive methods:

a. resolve problems;

b. perform complaint investigations;

c. refer impaired personnel to proper authorities;

d. provide orientation and in-service training to employees to promote effective CRCC services and safety of the patient, to familiarize staff with regulatory issues, and agency policy and procedures;

e. orient new direct health care personnel;

f. perform timely annual performance evaluations of health care personnel;

g. assure participation in regularly scheduled appropriate continuing education for all health professionals and home health aides.

h. assure that the care provided by the health care personnel promotes effective respite/end of life services and the safety of the patient; and

i. assure that the CRCC polices are enforced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8039. Governing Body**

A. The CRCC shall have a governing body that assumes full legal responsibility for determining, implementing and monitoring policies governing the CRCC's total operation. No contracts/arrangements or other agreements may limit or diminish the responsibility of the governing body. The governing body shall:

1. designate an administrator who is responsible for the day to day management of the CRCC program;

2. ensure that all services provided are consistent with accepted standards of practice;

3. develop and approve policies and procedures which define and describe the scope of services offered;

4. review policies and procedures at least annually and revise them as necessary; and

5. maintain an organizational chart that delineates lines of authority and responsibility for all CRCC personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8041. Home Health Aide**

A. The home health aide shall be a qualified person who provides direct patient care and/or housekeeping duties in the home or homelike setting under the direct supervision of a registered nurse. The home health aide competency evaluation is to be completed by a registered nurse prior to the home health aide being assigned to provide patient care.

B. The home health aide shall:

1. have a current nursing assistant certification and have successfully completed a competency evaluation; or

2. have successfully completed a training program and have successfully completed a competency evaluation; or

3. have successfully completed a competency evaluation; and

4. exhibit maturity, an empathetic, sympathetic attitude, and ability to deal effectively with the demands of the job;

5. have the ability to read, write, and carry out directions, promptly and accurately; and

6. when employed by more than one agency, inform all employers and coordinate duties to assure highest quality when providing services to the patients.

C. The home health aide shall provide services established and delegated in POC, record and notify the primary registered nurse of deviations according to standard practice including, but not limited to:

1. performing simple one-step wound care if written documentation of in-service for that specific procedure is in the aide's personnel record. All procedures performed by the aide must be in compliance with current standards of nursing practice;

2. providing assistance with mobility, transferring, walking, grooming, bathing, dressing or undressing, eating, toileting, and/or housekeeping needs. Some examples of assistance include:

a. helping the patient with a bath, care of the mouth, skin and hair;

b. helping the patient to the bathroom or in using a bed pan or urinal;

c. helping the patient to dress and/or undress;

d. helping the patient in and out of bed, assisting with ambulating;

e. helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate personnel; and

f. performing such incidental household services essential to the patient's health care at home that are necessary to prevent or postpone institutionalization.

D. The home health aide shall document each visit made to the patient and incorporate notes into the clinical record within one week of the visit.

E. The home health aide shall not:

1. perform any intravenous procedures, procedures involving the use of Levine tubes or Foley catheters, suctioning, or any other sterile or invasive procedures, other than rectal temperatures or enemas;

2. administer medications to any patient.

F. The home health aide shall attend an initial orientation. The orientation and training curricula for home health aides shall be detailed in a policies and procedures manual maintained by the CRCC agency. Provision of orientation and training shall be documented in the employee personnel record. The content of the basic orientation provided to home health aides shall include:

1. policies and objectives of the agency;

2. duties and responsibilities of a home health aide;

3. the role of the home health aide as a member of the health care team;

4. emotional problems associated with life-limiting illnesses;

5. information on the stages of childhood development;

6. information on terminal care, stages of death and dying, and grief;

7. principles and practices of maintaining a clean, healthy and safe environment;

8. ethics; and

9. confidentiality.

G. Home health aide initial training shall include the following areas of instruction:

1. assisting patients to achieve optimal activities of daily living;

2. documentation;

3. procedures for maintaining a clean healthful environment; and

4. changes in the patient's condition to be reported to the supervisor.

H. The home health aide must have a minimum of 12 hours of appropriate in-service training annually. In-service training may be prorated for employees working a portion of the year. However, part-time employees who worked throughout the year must attend all 12 hours of in-service training. In-services may be furnished while the aide is providing services to the patient, but must be documented as training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8043. Licensed Practical Nurse**

A. The licensed practical nurse (LPN) shall work under the direct supervision of a registered nurse and perform skilled nursing services as delegated by a registered nurse.

B. A licensed practical nurse must:

1. be currently licensed by the Louisiana State Board of Practical Nurse Examiners with no restrictions; and

2. have at least two years full-time experience as an LPN; and

3. when employed by more than one agency, inform all employers and coordinate duties to assure quality provision of services.

C. The LPN shall perform skilled nursing services under the supervision of a registered nurse, in a manner consistent with standard of practice including, but not limited to, such duties as:

1. observing, recording and reporting to the registered nurse or director of nurses on the general physical and mental conditions of the patient;

2. administering prescribed medications and treatments as permitted by state or local regulations;

3. assisting the physician and/or registered nurse in performing specialized procedures;

4. preparing equipment for treatments, including sterilization, and adherence to aseptic techniques;

5. assisting the patient with activities of daily living;

6. documenting each visit made to the patient and incorporate notes into the clinical record within one week of the visit;

7. performing complex wound care, if an in-service is documented for the specific procedure;

8. performing routine venipuncture (phlebotomy) if written documentation of competency is in personnel record. Competency must be evaluated by an RN even if the LPN has completed a certification course; and

9. may receive verbal orders from the physician regarding their assigned patients.

D. An LPN shall not:

1. access any intravenous appliance for any reason;

2. perform supervisory aide visits;
3. develop and/or alter the POC;
4. make an assessment visit;
5. evaluate recertification criteria;
6. make aide assignments; or
7. function as a supervisor of the nursing practice of any registered nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8045. Medical Director/Physician Designee**

A. The medical director/physician designee is a physician, currently and legally authorized to practice medicine in the state, and knowledgeable about the medical and psychosocial aspects of pediatric palliative care. The medical director reviews, coordinates, and is responsible for the management of clinical and medical care for all patients. The medical director or physician designee may be an employee or a volunteer of the agency. The agency may also contract for the services of the medical director or physician designee. The medical director/physician designee shall be a doctor of medicine or osteopathy licensed to practice in the State of Louisiana.

B. The medical director or physician designee assumes overall responsibility for the medical component of the patient care program and shall include, but not be limited to:

1. serving as a consultant with the attending physician regarding pain and symptom control as needed;
2. serving as the attending physician, if designated by the patient/family unit;
3. reviewing patient eligibility for CRCC services;
4. serving as a medical resource for the interdisciplinary team;
5. developing and coordinating procedures for the provision of emergency medical care;
6. participating in the development of the POC prior to providing care, unless the POC has been established by an attending physician; and
7. participating in the review and update of the POC, unless the plan of care has been reviewed/updated by the attending physician. These reviews must be documented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8047. Occupational Therapist**

A. An occupational therapist, when provided, must be licensed by the State of Louisiana and registered by the American Occupational Therapy Association.

B. The occupational therapist shall assist the physician in evaluating the patient's level of functioning by applying diagnostic and prognostic procedures including, but not limited to:

1. providing occupational therapy in accordance with physician's orders and the POC;
2. guiding the patient and family in his/her use of therapeutic, creative, and self-care activities for the purpose of improving function, in a manner consistent with accepted standards of practice;

3. observing, recording, and reporting to the physician and/or interdisciplinary team the patient's reaction to treatment and any changes in the patient's condition;

4. instructing and informing other health team personnel including, when appropriate, home health aides and family members in certain phases of occupational therapy in which they may work with the patient;

5. documenting each visit made to the patient and incorporating notes into the clinical record within one week of the visit;

6. participating in IDT conferences as needed; and

7. preparing a written discharge summary when applicable, with a copy retained in patient's clinical record and a copy forwarded to the attending physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8049. Pharmacist**

A. The CRCC shall employ a pharmacist licensed in the state of Louisiana or have a written agreement with a pharmacist licensed in the state of Louisiana to advise the CRCC facility on ordering, storage, administration, disposal, and record keeping of drugs and biologicals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8051. Physical Therapist**

A. The physical therapist (PT), when provided, must be currently licensed by the Louisiana State Board of Physical Therapy Examiners. The physical therapist shall assist the physician in evaluating the patient's functional status and physical therapy needs in a manner consistent with standards of practice to include, but not limited to:

1. assisting in the formation of the POC;
2. providing services within the scope of practice as defined by state law governing the practice of physical therapy, in accordance with the POC, and in coordination with the other members of the IDT;
3. observing and reporting to the physician and the IDT, the patient's reaction to treatment and any changes in the patient's condition;
4. instructing and informing participating members of the IDT, the patient, family/care givers, regarding the POC, functional limitations and progress toward goals;
5. documenting each visit made to the patient and incorporating notes into the clinical record within one week of the visit;
6. when physical therapy services are discontinued, preparing a written discharge summary, with a copy retained in the patient's clinical record and a copy forwarded to the attending physician; and
7. participating in IDT conferences as needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8053. Registered Nurse**

A. The CRCC facility shall designate a registered nurse (RN) to coordinate the implementation of the POC for each patient.

B. A licensed RN must be currently licensed to practice in the state of Louisiana with no restrictions and:

1. have at least two years full-time experience as a registered nurse; and
2. if employed by more than one agency, he/she must inform all employers and coordinate duties to assure quality service provision.

C. The registered nurse shall:

1. identify the patient's physical, psychosocial, and environmental needs and reassess as needed;
2. provide nursing services in accordance with the POC;
3. document problems, appropriate goals, interventions, and patient/family response to CRCC care;
4. collaborate with the patient/family, attending physician and other members of the IDT in providing patient and family care;
5. instruct patient/family in self-care techniques when appropriate;
6. supervise ancillary personnel and delegate responsibilities when required;
7. complete and submit accurate and relevant clinical notes regarding the patient's condition and incorporate into the clinical record within one week of the visit;
8. prepare specific written instructions for patient care when home health aide services are provided;
9. supervise and evaluate the home health aides ability to perform assigned duties, to relate to the patient and to work effectively as a member of the health care team;
10. when home health aides are assigned, will perform supervisory visits to the patient's residence at least every 30 days to assess relationships and determine whether goals are being met; and
11. document supervision, to include the aide/patient/family relationships, services provided and instructions and comments given, as well as other requirements on the clinical notes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8055. Social Worker**

A. The social worker shall have a master's degree from a school of social work and be licensed by the Louisiana State Board of Social Work Examiners. The social worker shall have documented clinical experience appropriate to the counseling and casework needs of children with life-limiting illnesses and their families. When the social worker is employed by one or more agencies he/she must inform all employers and cooperate and coordinate duties to assure the highest performance of quality when providing services to the patient and family.

B. The social worker shall assist the physician and other IDT members in understanding significant social and emotional factors relating to the patient's health status and shall include, but not be limited to:

1. assessment of the social and emotional, and familial factors having an impact on the patient's health status;

2. assisting in the formulation of the POC;
3. providing services within the scope of practice as defined by state law and in accordance with the POC;
4. coordination with other IDT members and participating in IDT conferences;
5. preparing clinical and/or progress notes and incorporate them into the clinical record within one week of the visit;
6. participating in discharge planning, and in-service programs related to the needs of the patient and family;
7. acting as a consultant to other members of the IDT; and
8. when medical social services are discontinued, submitting a written summary of services provided, including an assessment of the patient's current status, to be retained in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8057. Speech Pathologist**

A. A speech pathologist, when provided, must be licensed by the Louisiana Board of Examiners for Speech-Language Pathology and Audiology. The speech pathologist shall assist the physician in evaluation of the patient to determine the type of speech or language disorder and the appropriate corrective therapy in a manner consistent with standards of practice to include, but not limited to:

1. providing rehabilitative services for speech and language disorders;
2. observing, recording and reporting to the physician and the IDT the patient's reaction to treatment and any changes in the patient's condition;
3. instructing other health personnel and family members in methods of assisting the patient to improve and correct speech disabilities;
4. communicating with the registered nurse, director of nurses, and/or the IDT the need for a continuation of speech pathology services for the patient;
5. participating in IDT conferences, as needed;
6. documenting each visit made to the patient and incorporating notes in the clinical record within one week of the visit; and
7. preparing a written discharge summary as indicated with a copy retained in patient's clinical record and a copy forwarded to the attending physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8059. Volunteers**

A. Volunteers play a vital role in enhancing the quality of care delivered to the patient/family by encouraging community participation in the overall CRCC program. Volunteers who provide patient care and support services according to their experience and training must be in compliance with agency policies, and under the supervision of a CRCC employee. Volunteers shall be mature, nonjudgmental, caring individuals supportive of the CRCC concept of care, willing to serve others, and appropriately oriented and trained. Volunteers who are qualified to provide



professional services must meet all standards associated with their specialty area.

B. The volunteer shall:

1. provide assistance to the CRCC program, and/or patient/family in accordance with designated assignments;
2. provide input into the plan of care and interdisciplinary group meetings, as appropriate;
3. document services provided;
4. maintain strict patient/family confidentiality; and
5. communicate any changes or observations to the assigned supervisor.

C. The volunteers must receive appropriate documented training which shall include at a minimum:

1. an introduction to CRCC;
2. the role of the volunteer in CRCC;
3. concepts of death and dying;
4. communication skills;
5. care and comfort measures;
6. diseases and medical conditions;
7. stages of child development;
8. the concept of the CRCC family;
9. stress management;
10. bereavement;
11. infection control;
12. safety;
13. confidentiality;
14. patient rights; and
15. the role of the IDT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **Subchapter D. Patient Care Services**

##### **§8067. Admission Criteria**

A. The CRCC shall have written policies to be followed in making decisions regarding acceptance of patients for care. Decisions are based upon medical, physical and psychosocial information provided by the patient's attending physician, the patient/family and the interdisciplinary team. The admission criteria shall include:

1. the ability of the agency to provide core services on a 24-hours basis and provide for or arrange for non-core services to the extent necessary to meet the needs of individuals for care that is reasonable and necessary for the palliation and management of life-limiting illness and related conditions;
2. documentation of a life-threatening illness signed by a physician;
3. assessment of the patient/family needs and desire for CRCC services;
4. informed consent signed by the patient's representative who is authorized in accordance with state law to elect the care, which will include the purpose and scope of CRCC services; and
5. patient meets all other criteria required by any applicable payor sources.

B. Admission Procedures. Patients are to be admitted only upon the order of the patient's physician. An assessment visit shall be made by a registered nurse, who will assess the patient's needs. This assessment shall occur within 48 hours of referral for admission, unless otherwise ordered by the physician or unless a request for delay is made by the

patient/family. Documentation at admission will be retained in the clinical record and shall include:

1. signed consent forms;
2. signed patient's rights statement;
3. clinical data including physician order for care;
4. patient release of information;
5. orientation of the patient/care giver, which includes:
  - a. advanced directives;
  - b. agency services;
  - c. patient's rights; and
  - d. agency contact procedures; and
6. physician's documentation of the life-limiting illness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

##### **§8069. Plan of Care (POC)**

A. A written plan of care is developed for each patient/family by the physician, the medical director or physician designee and the IDT. The care provided to an individual must be in accordance with the POC.

B. At least one of the persons involved in developing the POC must be the registered nurse who conducted the initial assessment. Within three days of the assessment, the IDT must establish the POC. The POC shall be signed by the physician and an appropriate member of the IDT.

C. At a minimum the POC will include:

1. an assessment of the individual's needs and identification of services;
2. detailed description of the scope and frequency of services needed to meet the patient's and family's needs;
3. identification of problems with realistic and achievable goals and objectives;
4. medical supplies and appliances, including drugs and biologicals needed for the palliation and management of the life-limiting illness and related conditions;
5. patient/family understanding, agreement and involvement with the POC; and
6. recognition of the patient/family's psychological, social, religious and cultural variables, values, strengths, and risk factors.

D. The POC shall be incorporated into the clinical record within one week of its completion.

E. The CRCC shall designate a registered nurse to coordinate the implementation of the POC for each patient.

F. The plan of care shall be reviewed and updated when the patient's condition changes, and at a minimum every 90 days for home care and every 14 days for inpatient care, collaboratively with the IDT and the physician.

G. The agency shall have documented policies and procedures for the following:

1. the physician's participation in the development, revision, and approval of the POC. This is evidenced by a change in patient orders and documented communication between CRCC staff and the physician;
2. physician orders must be signed and dated in a timely manner, not to exceed 30 days.

H. The agency shall have documentation that the patient's condition and POC is reviewed and the POC updated, even when the patient's condition does not change.

I. The CRCC shall adhere to the following additional principles and responsibilities:

1. an assessment of the patient/family needs and desire for services and the CRCC programs' specific admission, transfer, and discharge criteria to determine any changes in services;

2. core services routinely available to CRCC patients on a 24-hour basis, seven days a week;

3. all other covered services available to the extent necessary to meet the needs of individuals for care that is reasonable and necessary for the palliation and management of a life-limiting illness and related conditions;

4. case-management provided and an accurate and complete documented record of services and activities describing care of patient/family is maintained;

5. collaboration with other providers to ensure coordination of services;

6. maintenance of professional management responsibility and coordination of the patient/family care regardless of the setting;

7. maintenance of contracts/agreements for the provision of services not directly provided by the CRCC;

8. provision or access to emergency medical care;

9. when the patient is admitted to a setting where CRCC care cannot be delivered, CRCC adheres to standards, policies and procedures on transfer and discharge and facilitates the patient's transfer to another care provider;

10. maintenance of appropriately qualified IDT health care professionals and volunteers to meet the patient's need;

11. maintenance and documentation of a volunteer staff that provide administrative and/or direct patient care. The CRCC must document a continuing level of volunteer activity; and

12. coordination of the IDT, as well as of volunteers, by a qualified health care professional, to assure continuous assessment, continuity of care and implementation of the POC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8071. Pharmaceutical Services**

A. The CRCC facility shall ensure that pharmaceutical services are provided under the directions of a pharmacist licensed to practice in the state of Louisiana. The facility shall ensure that pharmaceutical services are provided in accordance with appropriate methods and procedures for the storage, dispensing and administering of drugs and biologicals. The CRCC facility is responsible for ensuring that pharmaceutical services are provided in accordance with accepted professional principles and appropriate federal, state, and local laws, whether drugs and biologicals are obtained from community or institutional pharmacists or stocked by the facility. The CRCC shall ensure the appropriate monitoring and supervision of the pharmaceutical needs of the patient, and have written policies governing prescribing, administering, controlling, storing and disposing of all biologicals and drugs.

B. The CRCC shall provide for the pharmaceutical needs of the patient, consistent with the Board of Pharmacy regulations.

C. The CRCC shall institute procedures which protect the patient from medication errors.

D. CRCC procedures shall provide verbal and written instructions to patient and family as indicated.

E. CRCC policies and procedures shall describe which drugs and treatments are administered by the agency. All drugs shall be administered in compliance with the needs of the client and applicable laws and regulations.

F. The CRCC pharmacy shall have a pharmacy permit issued by the Louisiana Board of Pharmacy to allow ordering, storage, dispensing, and delivering of legend prescriptive orders. The CRCC shall have a current controlled dangerous substance license and a DEA registration. Pharmacy services shall be directed by a registered pharmacist licensed to practice in Louisiana.

G. A physician must order all medications for the patient.

1. If the medication order is verbal, the physician shall give it only to a licensed nurse, pharmacist, or another physician; and the individual receiving the order shall record and sign it immediately.

2. All orders (to include telephone and/or verbal) shall be signed by the prescribing physician in a timely manner, not to exceed 30 days.

H. Patients shall be accurately identified prior to administration of a medication.

1. Medications shall be administered only by a physician, a licensed nurse, the patient, or the parent or guardian, if his or her attending physician has approved.

2. Physicians' orders shall be checked at least daily to assure that changes are noted.

3. Drugs and biologicals shall be administered as soon as possible after dose is prepared for distribution, not to exceed two hours.

4. Each patient shall have an individual medication record (MAR) on which the dose of each drug administered shall be properly recorded by the person administering the drug to include:

a. name, strength, and dosage of the medication;

b. method of administration to include site, if applicable;

c. times of administration;

d. the initials of persons administering the medication. (The initials shall be identified on the MAR to identify the individual by name;)

e. medications administered on a "PRN" or as needed basis shall be recorded in a manner as to explain the reason for administration and the results obtained. The CRCC shall have a procedure to define its methods of recording these medications.

f. medications brought to the CRCC facility by the patient or other individuals for use by that patient shall be accurately identified as to name and strength, properly labeled, stored in accordance with facility policy and shall be administered to the patient only upon the written orders of the attending physician;

g. medications shall not be retained at the patient's bedside nor shall self-administration be permitted except when ordered by the physician. These medications shall be appropriately labeled and safety precautions taken to prevent unauthorized usage;

h. medication errors and drug reactions shall be immediately reported to the director of nurses, pharmacist

and physician and an entry made in the patients' medical record and/or an incident report. This procedure shall include recording and reporting to the physician the failure to administer a drug, for any reason other than refusal of a patient to take a drug. The refusal of a patient to take a drug shall be reported to the DON and the physician and an entry made in the patients' medical record;

i. the nurses station or medicine room for all CRCC facilities shall have readily available items necessary for the proper administration and accounting of medications;

j. each CRCC facility shall have available current reference materials that provide information on the use of drugs, side effects and adverse reactions to drugs and the interactions between drugs.

I. Each CRCC facility shall have a procedure for at least quarterly monitoring of medication administration. This monitoring shall be accomplished by a registered nurse or a pharmacist, to assure accurate administration and recording of all medications.

J. Procedures for storing and disposing of drugs and biologicals shall be established and implemented by the CRCC facility.

1. In accordance with state and federal laws, all drugs and biologicals shall be stored in locked compartments under proper temperature controls and only authorized personnel shall have access to the keys. A separately locked compartment shall be provided for storage of all controlled drugs and other drugs subject to abuse.

2. Controlled drugs no longer needed by the patient shall be disposed of in compliance with state requirements. In the absence of state requirements, the pharmacist and a registered nurse shall dispose of the drugs and prepare a record of the disposal. Each CRCC shall establish procedures for release of patient's own medications upon discharge or transfer of the patient. An entry of such release shall be entered in the medical record to include drugs released, amounts, who received the drugs and signature of the person carrying out the release.

3. There shall be a medicine room or drug preparation area at each nurses' station of sufficient size for the orderly storage of drugs, both liquid and solid dosage forms and for the preparation of medications for patient administration within the unit. In the event that a drug cart is used for storage and administration of drugs, the room shall be of sufficient size to accommodate placement of the cart.

4. There shall be a sink provided with hot and cold water in or near the medicine room or medication preparation area for washing hands or cleaning containers used in medicine preparation. Paper towels and soap dispensers shall be provided.

5. Sufficient lighting shall be provided and the temperature of the medicine storage area shall not be lower than 48°F or above 85°F and the room shall have adequate ventilation.

6. Drugs and biologicals, including those requiring refrigeration, shall be stored within the medicine room or shall have separate locks if outside the medicine room. The refrigeration shall have a thermometer and be capable of maintaining drugs at the temperature recommended by the manufacturer of the drug.

7. No laboratory solutions or materials awaiting laboratory pickup or foods shall be stored in the same

storage area (i.e., cupboard, refrigerator, or drawer) with drugs and biologicals. The areas designated for drug and biological storage shall be clearly marked.

8. The drug or medicine rooms shall be provided with safeguards, including locks on doors and bars on accessible windows, to prevent entrance by unauthorized persons.

a. Only authorized, designated personnel shall have access to the medicine storage area.

b. External use only drugs shall be plainly labeled and stored separate from drugs and biologicals. No poisonous substance shall be kept in the kitchen, dining area, or any public spaces or rooms. Storage within the drug or medicine room of approved poisonous substances intended for legitimate medical use, provided that such substances are properly labeled and stored in accordance with applicable federal and state law, shall not be prohibited.

9. The CRCC shall develop policies and procedures for maintaining an emergency medicine cabinet for the purpose of keeping a minimum amount of stock medications that may be needed quickly or after regular duty hours. The following rules shall apply to such a cabinet.

a. The contents of the emergency medicine cabinet shall be approved by the CRCC pharmacist and members of the medical and clinical staff responsible for the development of policies and procedures.

b. There shall be a minimum number of doses of any medication in the emergency medicine cabinet based upon the established needs of the CRCC facility.

c. There shall be records available to show amount received, name of patient and amount used, prescribing physician, time of administration, name of individual removing and using the medication, and the balance on hand.

d. There shall be written procedures for utilization of the emergency medicine cabinet with provisions for prompt replacement of used items.

e. The emergency medicine cabinet shall be inspected at least monthly replacing outdated drugs and reconciliation of its prior usage. Information obtained shall be included in a monthly report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8073. Pathology and Laboratory Services**

A. The CRCC shall provide or have access to pathology and laboratory services which comply with Clinical Laboratory Improvement Amendments (CLIA) guidelines and meet the patient's needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8075. Discharge/Transfer**

A. The CRCC shall provide adequate and appropriate patient/family information at the time discharge or transfer.

B. The CRCC shall develop appropriate policies/procedures for discharge planning.

C. The CRCC shall clearly document the reason for discharge. The CRCC patient shall be discharged only under following circumstances:

1. change in status of the life-limiting illness;
2. if the safety/well being of the patient or of the CRCC staff is compromised. The CRCC shall make every effort to resolve these problems satisfactorily before discharge. All efforts by the CRCC to resolve the problem shall be documented in detail in the patient's clinical record;
3. patient no longer qualifies for CRCC services due to age;
4. patient/family's noncompliance with the POC;
5. if the patient transfers to another agency or services; or
6. when the patient's representative elects to discontinue services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8077. Patient Rights and Responsibilities**

A. The CRCC shall ensure that the patient has the right to:

1. be cared for by a team of professionals who provides high quality comprehensive services as needed and appropriate for patient/family;
2. have a clear understanding of the availability of CRCC services;
3. receive appropriate and compassionate care regardless of race, gender, creed, disability, sexual orientation or the ability to pay for services rendered;
4. be fully informed regarding patient status in order to participate in the POC. The professional team shall assist patient/family in identifying which services and treatments will help attain these goals;
5. be fully informed regarding the potential benefits and risks of all medical treatments or services suggested, and to accept or refuse those treatments and/or services as appropriate to patient/family personal wishes;
6. be treated with respect and dignity;
7. have patient/family trained in effective ways of caring for the patient;
8. confidentiality with regard to provision of services and all client records, including information concerning patient/family health status, as well as social, and/or financial circumstances. The patient information and/or records shall be released only with patient/family's written consent, and or as required by law;
9. voice grievances concerning patient care, treatment, and/or respect for person or privacy without being subject to discrimination or reprisal, and have any such complaints investigated by the CRCC; and
10. be informed of any fees or charges in advance of services for which patient/family may be liable. Patient/family has the right to access any insurance or entitlement program for which patient may be eligible.

B. An informed consent form that specifies the type of care and services that may be provided as CRCC care during the course of the illness shall be obtained, either from the individual or representative.

C. The patient/family has the responsibility to:

1. participate in developing the POC and update as his or her condition/needs change;
2. provide CRCC with accurate and complete health information;

3. remain under a doctor's care while receiving CRCC services; and

4. assist CRCC staff in developing and maintaining a safe environment in which patient care can be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **§8079. Clinical Records**

A. In accordance with accepted principles of practice the CRCC shall establish and maintain a clinical record for every individual receiving care and services. The record shall be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. The clinical record shall contain all pertinent past and current medical, nursing, social, and other therapeutic information, including the current POC under which services are being delivered.

B. CRCC records shall be maintained in a distinct location and not mingled with records of other types of health care related agencies.

C. Original clinical records shall be kept in a safe and confidential area which provides convenient access to clinicians.

D. The agency shall have policies addressing who is permitted access to the clinical records. No unauthorized person shall be permitted access to the clinical records.

E. All clinical records shall be safeguarded against loss, destruction and unauthorized use.

F. Records for individuals under the age of majority shall be kept in accordance with current state and federal law.

G. When applicable, the agency shall obtain a signed Release of Information form from the patient and/or the patient's family. A copy shall be retained in the record.

H. The clinical records shall contain a comprehensive compilation of information including, but not limited to:

1. initial and subsequent Plans of Care and initial assessment;
2. documentation of a life-limiting diagnosis;
3. written physician's orders for admission and changes to the POC;
4. current clinical notes {at least the past 60 days};
5. Plan of Care;
6. signed consent and authorization forms;
7. pertinent medical history; and
8. identifying data, including:
  - a. name;
  - b. address;
  - c. date of birth;
  - d. sex;
  - e. agency case number; and
  - f. next of kin.

I. Entries are made for all services provided and are signed by the staff providing the service.

J. Complete documentation of all services and events (including evaluations, treatments, progress notes, etc.) are recorded whether furnished directly by staff or by arrangement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

**§8081. Nursing Services**

A. There shall be an organized nursing service that provides 24-hour nursing services. The nursing services shall be under the direction of a director of nursing, who is a registered nurse licensed to practice in Louisiana, employed full time by only one licensed agency. There shall be a similarly qualified registered nurse available to act in the absence of the director of nursing.

B. The CRCC facility shall have staff on the premises on a 24-hour a day, seven-day a week basis. There shall be a registered nurse on duty at all times when patients are in the facility. In addition, the facility shall provide nursing services sufficient to meet the total nursing needs of the patients in the facility. When there are no patients in the CRCC facility, the facility shall have a registered nurse on-call to be immediately available to the CRCC facility. The services provided must be in accordance with the patient's plan of care. Each shift shall include at least two direct patient care staff, one of which must be a registered nurse who provides direct patient care. The nurse to patient ratio shall be at least one nurse to every eight patients. In addition, there shall be sufficient number of direct patient care staff on duty to meet the patient care needs.

C. Written nursing policies and procedures shall define and describe the patient care provided.

D. Nursing services shall be either furnished and/or supervised by a registered nurse and all nursing services shall be evaluated by a registered nurse.

E. A registered nurse shall assign the nursing service staff for each patient in the CRCC facility. The CRCC facility shall provide 24-hour nursing services sufficient to meet the total nursing needs of the patient and which are in accordance with the patient's plan of care. Staffing shall be planned so that each patient receives treatments, medications and diet as prescribed, and is kept clean, well-groomed, and protected from accident, injury, and infection. Nursing services staff shall be assigned clinical and/or management responsibilities in accordance with education, experience and the current Louisiana Nurse Practice Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

**§8083. Nutritional Services**

A. Nutritional services shall be under the supervision of a qualified registered dietitian, who is employed either full time, part time, on a consulting or volunteer basis. If the registered dietitian is not full time, there shall be a full-time dietary manager who is responsible for the daily management of dietary services.

B. The registered dietitian shall be responsible for assuring that quality nutritional care is provided to patients by providing and supervising the nutritional aspects of patient care.

C. The CRCC facility shall have a dietary manager who is responsible for:

1. planning menus that meet the nutritional needs of each patient, following the orders of the patient's physician and, to the extent medically possible, the recommended

dietary allowances of the Food and Nutrition Board of the National Academy of Sciences. There shall be a current therapeutic diet manual approved by the dietician and medical staff, and readily available to all medical, nursing, and food service personnel, which shall be the guide used for ordering and serving diets;

2. supervising the meal preparation and service to ensure that the menu plan is followed.

D. The CRCC facility shall:

1. serve at least three meals or their equivalent each day at regular intervals with not more than 14 hours between a substantial evening meal and breakfast.

2. include adequate nutritional services to meet the patient's dietary needs and food preferences, including the availability of frequent, small, or mechanically-altered meals 24 hours a day;

3. be designed and equipped to procure, store, prepare, distribute, and serve all food under the requirements of Part XXIII (Retail Food Establishments) of the Louisiana State Sanitary Code (LAC 51:XXIII); and

4. provide a nourishment station which contains equipment to be used between scheduled meals such as a warming device, refrigerator, storage cabinets and counter space. There shall be provision made for the use of small appliances and storage. This area shall be available for use by the patient, the patient's family, volunteers, guests and staff.

E. Sanitary Conditions

1. Food shall be free from spoilage, filth, or other contamination and shall be safe for human consumption.

2. All food provided by the CRCC shall be procured from sources that comply with all laws and regulations related to food and food labeling.

3. All food shall be stored, prepared, distributed and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drink at or below 40°F, except when being prepared and served. Refrigerator temperatures shall be maintained at 40°F or below; freezers at 0°F or below.

4. Hot foods shall leave the kitchen or steam table at or above 140°F. In-room delivery temperatures shall be maintained at 120°F or above for hot foods and 50°F or below for cold items. Food shall be covered during transportation and in a manner that protects it from contamination while maintaining required temperatures.

5. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized and stored. This includes maintaining a water temperature in dish washing machines at 140°F during the wash cycle (or according to the manufacturer's specifications or instructions) and 180°F for the final rinse. Low temperature machines shall maintain a water temperature of 120°F with 50 ppm (parts per million) of hypochlorite (household bleach) on dish surfaces. For manual washing in a three-compartment sink, a wash water temperature of 75°F with 50 ppm of hypochlorite or equivalent or 12.5 ppm of iodine; or a hot water immersion at 170°F for at least 30 seconds shall be maintained. An approved lavatory shall be convenient and equipped with hot and cold water tempered by means of a mixing valve or combination faucet for dietary services staff use. Any self-closing, slow-closing, or metering faucet shall

be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

6. No staff, including dietary staff, shall store personal items within the food preparation and storage areas.

7. Dietary staff shall use good hygienic practices. Staff with communicable diseases or infected skin lesions shall not have contact with food if that contact may transmit the disease.

8. Toxic items such as insecticides, detergents, polishes and the like shall be properly stored, labeled and used.

9. Garbage and refuse shall be kept in durable, easily cleanable, insect and rodent-proof containers that do not leak and do not absorb liquids. Containers used in food preparation and utensil washing areas shall be kept covered after they are filled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

### **Subchapter E. Administration**

#### **§8089. Agency Operations**

A. Premises (See definition of CRCC Premises.)

1. The CRCC must have a distinct telephone number. If the telephone number is shared with other health care related agencies, the telephone operator(s) shall demonstrate knowledge and ability to distinguish and direct calls to the appropriate persons. If an answering service is used after normal hours, there shall be evidence of distinct CRCC staff and the answering service should be able to direct calls to the appropriate persons for each service. Staff shall be able to distinguish and describe the scope and delineation of all activities being provided by the CRCC.

2. Staff working areas shall be designed so that when planning for services, patient confidentiality is maintained.

3. The CRCC shall not share office space with a non-health care related entity. When office space is shared with another health care related entity, the CRCC shall operate separate and apart.

B. Hours of Operation

1. CRCC provides medical and nursing services 24 hours a day, seven days per week. In addition the facility shall ensure staff availability to assess and meet changing patient/family needs, provide instruction and support, and conduct additional assessment or treatment, 24 hours a day, seven days per week.

2. If the CRCC has no inpatients, there still shall be an RN on call at all times.

C. All policies and procedures:

1. shall be written, current, and annually reviewed by appropriate personnel;

2. shall contain policies and procedures specific to agency addressing personnel standards and qualifications, personnel records, agency operations, emergency procedures, patient care standards, patient rights and responsibilities, problem and complaint resolution, purpose and goals of operation, the defined service area, emergency/disaster procedures, as well as regulatory and compliance issues; and

3. shall meet or exceed requirements of the licensing standards and all applicable federal, state, and local laws.

D. Operational Requirements

1. CRCC's responsibility to the community:

a. shall not accept orders to assess or admit from any source other than a licensed physician or authorized physician representative (e.g., hospital discharge planner).

b. shall use only factual information in advertising;

c. shall not participate in solicitation;

d. shall not accept as a patient any person who does not have a diagnosis of a life-limiting illness and meet the age requirements;

e. shall develop policies/procedures for patients with no or limited payor source;

f. shall have policies and procedures and a written plan for emergency operations in case of disaster;

g. is prohibited from harassing or coercing a prospective patient or staff member to use a specific facility or to change to another CRCC;

h. shall have policies and procedures for post-mortem care in compliance with all applicable federal, state, and local laws;

i. may participate as community educators in community/health fairs; and

j. may provide free non-invasive diagnostic tests, such as blood pressure screening.

2. CRCC's responsibility to the patient shall include, but is not limited to:

a. being in compliance with licensing standards and all applicable federal, state, and local laws at all times;

b. acting as the patient advocate in medical decisions affecting the patient;

c. protecting the patient from unsafe skilled and unskilled practices;

d. protecting the patient from being harassed, bribed, and or any form of mistreatment by an employee or volunteer of the agency;

e. providing patient information on the patient's rights and responsibilities;

f. providing information on advanced directives in compliance with all applicable federal, state, and local laws;

g. protecting and assuring that patient's rights are not violated;

h. encouraging the patient/family to participate in developing the POC and provision of services;

i. making appropriate referrals for family members outside the CRCC's service area for bereavement follow-up.

3. Responsibility of the CRCC to the staff shall include, but is not limited to:

a. providing a safe working environment;

b. having safety and emergency preparedness programs that conform with federal, state, and local requirements and that include:

i. a plan for reporting, monitoring, and follow-up on all accidents, injuries, and safety hazards;

ii. documentation of all reports, monitoring activity, and follow-up actions, education for patient/family, care givers, employees and volunteers on the safe use of medical equipment;

iii. evidence that equipment maintenance and safety requirements have been met;

iv. policies and procedures for storing, accessing, and distributing abusable drugs, supplies and equipment;

- v. a safe and sanitary system for identifying, handling, and disposing of potentially infectious biomedical wastes; and
- vi. a policy regarding use of smoking materials in all care settings;
- c. have policies which encourage realistic performance expectations;
- d. provide adequate time on schedule for required travel;
- e. provide adequate information, in-service training, supplies, and other support for all employees to perform to the best of their ability; and
- f. provide in-service training to promote effective, quality CRCC care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8091. Contract Services**

A. The administrator and the DON shall be direct employees of the CRCC.

B. Whenever services are provided by an outside agency or individual, a legally binding written agreement shall be effected. The legally binding written agreement shall include at least the following items:

- 1. identification of the services to be provided;
- 2. a stipulation that services shall be provided only with the express authorization of the CRCC;
- 3. the manner in which the contracted services are coordinated, supervised, evaluated by the CRCC;
- 4. the delineation of the role(s) of the CRCC and the contractor in the admission process, patient/family assessment, and the IDT conferences;
- 5. requirements for documenting that services are furnished in accordance with the agreement;
- 6. the qualifications of the personnel providing the services;
- 7. assurance that the personnel contracted complete the clinical record in the same timely manner as required by the staff personnel of the CRCC;
- 8. payment fees and terms; and
- 9. statement that the CRCC retains responsibility for appropriate training of the personnel who provide care under the agreement.

C. The CRCC shall document review of contracts on an annual basis.

D. The CRCC shall coordinate services with contract personnel to assure continuity of patient care.

E. CRCC shall maintain professional management responsibilities for those services and ensures that they are furnished in a safe and effective manner by qualified persons and in accordance with the patient's POC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8093. Quality Assurance**

A. The CRCC shall have an on-going comprehensive, integrated, self-assessment quality improvement process which provides assurance that patient care is provided at all

times in compliance with accepted standards of professional practice.

B. The CRCC shall have written plans, policies and procedures addressing quality assurance.

C. The CRCC shall monitor and evaluate its resource allocation regularly to identify and resolve problems with the utilization of its services, facilities and personnel.

D. The CRCC shall follow a written plan for continually assessing and improving all aspects of operations which include:

- 1. goals and objectives;
- 2. the identity of the person responsible for the program;
- 3. a system to ensure systematic, objective regular reports are prepared and distributed to the governing body and any other committees as directed by the governing body;
- 4. the method for evaluating the quality and the appropriateness of care;
- 5. a method for resolving identified problems; and
- 6. a method for implementing practices to improve the quality of patient care.

E. The plan shall be reviewed at least annually and revised as appropriate by the governing body.

F. Quality assessment and improvement activities shall be based on the systematic collection, review, and evaluation of data which, at a minimum, includes:

- 1. services provided by professional and volunteer staff;
- 2. audits of patient charts;
- 3. reports from staff, volunteers, and clients about services;
- 4. concerns or suggestions for improvement in services;
- 5. organizational review of the CRCC program;
- 6. patient/family evaluations of care; and
- 7. high-risk, high volume and problem-prone activities.

G. When problems are identified in the provision of CRCC care, there shall be evidence of corrective actions, including ongoing monitoring, revisions of policies and procedures, educational intervention and changes in the provision of services.

H. The effectiveness of actions taken to improve services or correct identified problems shall be evaluated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

#### **§8095. Cessation of Business**

A. If at any time the agency is no longer operational, the license shall be deemed to be invalid and shall be returned to DHH within five working days.

B. The agency owner shall be responsible for notifying DHH of the location of all records and a contact person.

- C. In order to be operational, an agency shall:
- 1. have had at least 10 new patients admitted since the last annual survey;
  - 2. be able to accept referrals at any time;
  - 3. have adequate staff to meet the needs of their current patients;

4. have required designated staff on the premises at all times during operation;

5. be immediately available by telecommunications 24 hours per day. A registered nurse shall answer calls from patients and other medical personnel after hours; and

6. be open for the business of providing CRCC services to those who need assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.14(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

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 Tuesday, December 28, 2004, at 9:30 am 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.

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

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Children's Respite Care  
Centers Licensing**

**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 FY 04-05, 05-06 and 06-07. It is anticipated that \$6,732 (\$3,366 SGF and \$3,366 FED) will be expended in FY 04-05 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 04-05. It is anticipated that \$3,366 will be expended in FY 04-05 for the federal share of the expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This rule proposes to adopt licensing standards for Children's Respite Care Centers. In accordance with Act 571 of the 2003 Regular Session of the Legislature, it is anticipated that there will initially be one Children's Respite Care Center to be located in Orleans or Jefferson Parish. Implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups, except for the \$600 annual licensing fee for each Children's Respite Care Center that applies for licensure.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no known effect on competition. The proposed rule could result in employment opportunities for respite care workers.

Ben A. Bearden  
Director  
0411#066

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**

Substance Abuse/Addiction Treatment Facilities Licensing  
(LAC 48:I.Chapter 74)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.Chapter 74 as authorized by R.S. 40:1058.1-9. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Act 655 of the 2003 Regular Session of the Louisiana Legislature requires the department to promulgate rules to modify existing licensing requirements to generally reflect the national accreditation standards. In compliance with Act 655, the department proposes to amend the licensing standards for substance abuse/addiction treatment facilities as published in the *Louisiana Register*, Volume 26, Number 7.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972 as the proposed Rule may decrease the frequency of visits to substance abuse/addiction treatment facilities for some clients.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the licensing standards for substance abuse/addiction treatment facilities.

**Title 48**

**PUBLIC HEALTH GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 74. Minimum Standards/Requirements for Abuse/Addiction Treatment Facilities/Programs**

**Subchapter A. General Provisions**

**§7401. Definitions and Acronyms**

A. The following words and terms when used in this Chapter 74 shall have the following meanings, unless the context clearly states otherwise.

\*\*\*

*Accredited* the process of review and acceptance by an accreditation body or any additional SAMSHA approved accrediting body such as the Joint Commission on



Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF) or Council on Accreditation (COA).

\*\*\*

**Opioid Treatment Program** Can a program engaged in opioid treatment of individuals with an opioid agonist treatment medication.

\*\*\*

**State Opioid Authority (SOA)** The agency designated by the governor or other appropriate official designated by the governor to exercise the responsibility and authority within the state for governing the treatment of opiate addiction with an opioid drug.

\*\*\*

**Take Home Dose(s)** Can opioid agonist treatment medication dose dispensed to patients for unsupervised use for the day(s) the clinic is closed for business, including Sundays and state and federal holidays.

**Therapeutic Privilege Dose(s)** Can opioid agonist treatment medication dose dispensed for unsupervised use, by order of the medical director, to patients compliant with, and stable in, the treatment program for a period of not less than 30 days, under the conditions provided for in §7443.F.1.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1451 (July 2000), LR 31:

### §7403. Licensing

A. - C.2.f. ...

3. The Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) promulgated a rule requiring that all Opioid Treatment Programs (OTP) shall be accredited by an accreditation body approved by SAMHSA effective May 19, 2004 (*Federal Register, Volume 66, Number 11, January 17, 2001*). If an Opioid Treatment Program is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities or the Council on Accreditation, or any additional SAMSHA approved accrediting body and the OTP requests deemed status from the Department, the Department may accept such accreditation in lieu of its annual on-site resurvey if the facility forwards their findings to the state agency (i.e., Health Standards Section of the Department) within 30 days of its accreditation. This accreditation will be accepted as evidence of satisfactory compliance with all provisions except those expressed in §§7403.J, K, and L, 7405.A and B, 7407.A, 7409.D, 7411.A, 7413 et seq., and 7417.E.

4. The following set of circumstances can cause the state agency to perform a licensing survey on an accredited OTP:

- a. any valid complaints in the preceding 12-month period;
- b. addition of services;

c. a change of ownership in the preceding 12-month period;

d. issuance of a provisional license in the preceding 12-month period;

e. serious violations of licensing standards or professional standards of practice that were identified in the preceding 12-month period; or

f. reports of inappropriate treatment or service resulting in death or serious injury.

D. - E.4. ...

F. Off-sites. Related facilities may share a name with the primary facility if a geographic indicator is added to the end of the facility name. All facilities must have a separate license from that issued to the parent facility.

F.1 - F.4. ...

5. Repealed.

G. License Designation. A facility shall have written notification of restrictions, limitations, and services available to the public, community, clients, and visitors.

G.1 - G.2.c. ...

3. Additional Designations (conjointly approved by OAD/HSS in writing)

4. repealed.

H. - J. ...

K. Notification of Change Requirements. Any change listed below that is not reported in writing to HSS within 10 days is delinquent and subject to sanction. Written approval of changes by DHH is required to remain in compliance with licensure standards.

K.1 - K.2. ...

3. Address Change. Change of address requires issuance of a replacement license. Prior approval is required, and is based on submitting requested information to HSS. The following information and documentation must be submitted to HSS for consideration of an address change:

a. a complete license application reflecting the new address;

b. a licensing fee of \$600 for outpatient programs and \$600 plus \$5 per bedroom for inpatient programs;

c. documentation to show that architectural plans and specifications on the new site have been reviewed and approved by the Division of Engineering and Architectural Services;

d. copies of on-site inspection reports performed by the Office of State Fire Marshal and Office of Public Health on the new site;

e. a letter-sized sketch of the new site's floor plan;

f. anticipated effective date of the move; and

g. advise HSS on whether the new site is part of another existing health care entity.

K.4. - K.5. ...

6. Closure. HSS and SOA must be informed of any closure except Sundays and state and federal holidays.

L. - L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and

Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1453 (July 2000), LR 31:

**§7413. Adverse Action**

A. - C.2. ...

3. violation of any provision of this Part or of the minimum standards, rules, or orders promulgated hereunder including, but not limited to:

C.3.a. - E.3. ...

4. Correction of a deficiency is not a basis for an administrative reconsideration or administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1456 (July 2000), LR 31:

**Subchapter C. Children/Adolescent Programs**

**§7427. Children/Adolescent Programs**

A. General. Provisions in this §7427 apply to facilities that are inpatient, outpatient, or community based when service recipients are under 18 years of age. The following provisions are in addition to listed requirements for programs, and take precedence over conflicting requirements when services are provided to adolescents or children. Specific programs may have additional requirements in addition to those listed in this §7427.

A.1. - D.12. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1464 (July 2000), LR 31:

**§7429. Primary Prevention Programs**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1465 (July 2000), repealed LR 31:

**Subchapter E. Outpatient Programs**

**§7443. Opioid Addiction Treatment Programs**

A. - A.1. ...

2. The goal of all opiate addiction treatment is complete abstinence by the client from all addictive substances, other than those prescribed through the treatment plan.

3. Treatment protocols require that the facility provide medically-approved and medically-supervised assistance to withdraw from the synthetic narcotic when:

- a. the client requests withdrawal;
  - b. quality indicators predict successful withdrawal;
- and
- c. client or payor source suspends payment of fees.

4. Each facility is required to independently meet the requirements of the protocols established by OAD/State Opioid Authority

5. Any program that fails to maintain any required licensure shall be also terminated immediately, pursuant to the provisions of §7413 entitled Adverse Actions.

6. Each program shall also comply with requirements of 42 CFR Part 8 unless the comparable state requirement is more stringent.

7. Each client shall have a documented physical evaluation and examination by a physician or advanced practice registered nurse as follows:

- a. upon admission;
- b. every other week until the client becomes physically stable;
- c. as warranted by patient response to medication during the initial stabilization period or any other subsequent stabilization period;
- d. annually thereafter; and
- e. any time that the client is medically unstable.

B. - B.1.a. ...

- b. individual counseling;
- c. initial treatment plan including initial dose of medication and plan for treatment of critical health or social issues; and
- d. client orientation.

2. Early Stabilization. This phase is the first consecutive 90 days of treatment. Beginning on the third to seventh day of treatment (following initial treatment) through 90 days duration, the following shall be provided:

- a. frequent monitoring by a nurse of the client's response to medication in the first 90 days of treatment. This monitoring must be done at least weekly;
- b. ...
- c. development of a treatment plan within 30 days with input by all disciplines, client and significant others; and
- d. ...

3. Maintenance Treatment. This phase follows the end of early stabilization and lasts for an indefinite period of time. Services to be provided are:

- a. random monthly drug screens until the client has negative drugs-of-abuse screens for 90 days, consecutively. Thereafter, at least eight random drug abuse tests per year shall be performed, as well as random testing for alcohol when indicated. Clients who are allowed six days of therapeutic privilege doses shall be tested every month;
- b. ...
- c. documented reviews of the treatment

plan every 90 days in the first two years of treatment by the treatment team; and

- d. ...

4. Withdrawal. Medically supervised withdrawal from the synthetic narcotic with continuing care. This service is provided if and when appropriate. Services to be provided are:

a. decreasing the dose of the synthetic narcotic to accomplish gradual, but complete withdrawal, as medically tolerated by the client;

b. ...

c. discharge planning with continuity of care to assist the client to function without support of the medication and treatment activities.

C. - C.2. ...

3. Written criteria are used to determine when a client will receive additional counseling.

C.4. - D.1.b. ...

c. approve all transport devices for take home medications in accordance with the program's diversion control policy.

2. Nursing. All medications shall be administered by a practitioner licensed under state law and registered under the appropriate state and federal laws to administer opioid drugs, or by an agency of such a practitioner, supervised by and under the order of the licensed practitioner.

3. ...

4. QPC. There must be a sufficient number of QPCs to meet the needs of the clients, but in no instance shall the ratio exceed 75 clients to one full-time QPC.

D.5. - E.1.a. ...

b. meets the federal requirements, including exceptions, regarding determination that the client is currently addicted to opiates and has been addicted to opiates for at least one year prior to admission.

2. Physician Verification. The physician shall diagnose the client based upon:

a. referring medical history and diagnosis of chronic opiate addiction, as currently defined in the Diagnostic and Statistical Manual for Mental Disorders (DSM);

b. physical examination; and

c. documented history of opiate addiction.

F. Take Home and Therapeutic Privilege Dose(s). Determinations for therapeutic privilege dose(s) shall be made by the treatment team, documented in the client record, and ordered by the medical director.

1. Client Responsibilities/Considerations Factors. The following must be documented in the client record before a therapeutic privilege dose is authorized by the treatment team.

a. negative drug/alcohol screens for at least 30 days;

b. - c. ...

d. absence of known drug related criminal activity during treatment;

e. - g. ...

2. Standard Schedule (if indicated)

a. After the first 30 days of treatment, and during the remainder of the first 90 days of treatment, one therapeutic privilege dose per week may be allowed if the treatment team and medical director determine, after consideration of the factors in §7443.F.1 above, that the therapeutic privilege dose is appropriate. Documentation of the determination and of the consideration of each of the

factors listed in §7443.F.1 above must be contained in the client record.

b. In the second 90 days of treatment, two therapeutic doses per week may be allowed if the treatment team and medical director determine, after consideration of the factors in §7443.F.1 above, that the therapeutic privilege doses are appropriate. Documentation of the determination and of the consideration of each of the factors listed in §7443.F.1 above must be contained in the client record.

c. In the third 90 days of treatment, three therapeutic doses per week may be allowed if the treatment team and medical director determine, after consideration of the factors in §7443.F.1 above, that the therapeutic privilege doses are appropriate. Documentation of the determination and of the consideration of each of the factors listed in §7443.F.1 above must be contained in the client record.

d. In the final 90 days of treatment of the first year, four therapeutic doses per week may be allowed if the treatment team and medical director determine, after consideration of the factors in §7443.F.1 above, that the therapeutic privilege doses are appropriate. Documentation of the determination and of the consideration of each of the factors listed in §7443.F.1 above must be contained in the client record.

e. After one year in treatment, a six-day dose supply, consisting of take home doses and therapeutic doses, may be allowed once a week if the treatment team and medical director determine, after consideration of the factors in §7443.F.1 above, that the therapeutic privilege doses are appropriate. Documentation of the determination and of the consideration of each of the factors listed in §7443.F.1 above must be contained in the client record.

f. After two years in treatment, a 13-day dose supply, consisting of take home doses and therapeutic doses, may be allowed once every two weeks if the treatment team and medical director determine, after consideration of each of the factors in §7443.F.1 above, that the therapeutic privilege doses are appropriate. Documentation of the determination and of the consideration of each of the factors listed in §7443.F.1 above must be contained in the client record.

3. Loss of Privilege. Positive drug screens at any time for any drug other than those prescribed will require a new determination to be made by the treatment team regarding take-home doses and therapeutic privilege doses.

4. An exception to the standard schedule can only be granted for emergencies and severe travel hardships. The facility must request the exception and obtain approval for the exception from the appropriate federal agency. The facility must retain documentation in the client's clinical record which includes:

a. documentation by the physician as to the justification for the requested exception; and

b. documentation of the federal approval or the federal exception.

G. Client Record. Specific additional requirements for documentation include:

1. standards of clinical practice regarding medication administration/dispensing;

2. results of the five most recent drug screens with action taken for positive results;

3. physical status and use of additional prescription medication;

4. monthly or more frequently, as indicated by needs of the client, contact notes/progress notes which include employment/vocational needs, legal and social status, overall client stability; and

5. any other pertinent information.

H. Training. In addition to orientation as described in §7419, "Staffing Qualification/Requirements," all direct care employees shall receive training and demonstrate knowledge that includes:

1. symptoms of opiate withdrawal;

2. drug screens and collections, policies and procedures;

3. current standards of practice regarding opiate addiction treatment;

4. poly-drug addiction; and

5. information necessary to assure care is provided within accepted standards of practice.

I. Temporary transfers or Guest Dosing. The facilities involved shall do the following.

1. The receiving facility shall verify dosage prior to administering medication.

2. The sending facility shall verify dosage and obtain approval/acceptance from receiving facility prior to client's transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Health and Human Resources Administration, LR 2:154 (May 1976), amended by the Department of Health and Human Resources, Office of Hospitals, Bureau of Substance Abuse, LR 3:16 (January 1977), amended by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1471 (July 2000), LR 31:

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 Tuesday, December 28, 2004 at 9:30 am 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.

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

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Substance Abuse/Addiction Treatment  
Facilities Licensing**

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 FY 04-05, 05-06 and 06-07. It is anticipated that \$1,360 (\$680 SGF and \$680 FED) will be expended in FY 04-05 for the state's

administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 04-05. It is anticipated that \$680 will be expended in FY 04-05 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to amend the licensing standards for substance abuse/addiction treatment facilities (approximately 155). In accordance with Act 655 of the 2003 Regular Session of the Louisiana Legislature, the proposed rule also amends criteria for Opioid Treatment Facilities (approximately 13) to reflect the national accreditation standards. Implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0411#067

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

Long-Term Care Insurance (LAC 37:XIII.Chapter 19)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend Regulation 46 (R.S. 22:1731-1741) regarding Long-Term Care Insurance.

The proposed regulation was necessitated by the passage of Acts 2004, No. 780 of the Regular Session of the Louisiana Legislature, and is being amended to accomplish those purposes required by said Act, which expanded the scope of long-term care insurance to include, among other things, renewal policies, as amended; to provide for definitions; to provide for disclosures and performance standards; to provide for nonforfeiture benefits; to provide for regulations; and to provide for penalties and other related matters. Additionally, the amendments establish standards for the disclosure of rating practices to consumers, initial filing requirements, and premium rate increases as well as clarify requirements and existing laws relative to long-term care insurance. The amendments also change the non-forfeiture requirements, update the personal worksheet and add the long-term care insurance potential rate increase disclosure form. The Department of Insurance is adopting the NAIC Model Regulation in order to implement the NAIC Long-Term Care Insurance Model Act which conforms to state statutes. The proposed amendments affect the following Sections of the LAC 37:XIII: §1901, §1903, §1905, §1909, §1911, §1913, §1915, §1917, §1919, §1921, §1925, §1927, §1929, §1931, §1933, §1935, §1937, §1939,

§1941, §1943, §1945, §1949, §1951, §1953, §1955, §1957, §1959 and §1961, Appendices A, B, C, E, F, and G.

The following table shows new placement for some of the current Sections being amended.

Proposed Placement	Current Placement
§1921. Prohibition against Post-Claim Underwriting	§1915
§1923. Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies	§1917
§1925. Requirements for Application Forms and Replacement Coverage	§1921
§1927. Reporting Requirements	§1923
§1929. Licensing	§1925
§1931. Discretionary Powers of Commissioner	§1927
§1933. Reserve Standards	§1929
§1935. Loss Ratio	§1931
§1937. Premium Rate Schedule Increases (new)	
§1939. Filing Requirement	§1933
§1941. Filing Requirements for Advertising	§1935
§1943. Standards for Marketing	§1937
§1945. Suitability	§1939
§1947. Prohibition against Pre-Existing Conditions and Probationary Periods in Replacement Policies or Certificates	§1941
§1949. Nonforfeiture Benefit Requirement	§1943
§1951. Standards for Benefit Triggers	§1945
§1953. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts	§1947
§1955. Standard Format Outline of Coverage	§1949
§1957. Requirement to Deliver Shopper's Guide	§1951
§1959. Penalties	§1953
§1961. Appendices A-G	§1955

**Title 37  
INSURANCE**

**Part XIII. Regulations**

**Chapter 19. Regulation 46 Long-Term Care Insurance**

**§1901. Purpose**

A. The purpose of this regulation is to implement R.S. 22:1731-1741, Long-Term Care Insurance Act, to promote the public interest; to promote the availability of long-term care insurance coverage; to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices; to facilitate public understanding and comparison of long-term care insurance coverages; and to facilitate flexibility and innovation in the development of long-term care insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

**§1903. Applicability and Scope**

A. Except as otherwise specifically provided, this regulation applies to all long-term care insurance policies, including qualified long-term care contracts and life insurance policies that accelerate benefits for long-term care delivered, or issued for delivery, in this state on or after January 20, 2005, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations; and all similar organizations to the extent they are authorized to issue life or health insurance. Certain provisions of this

regulation apply only to qualified long-term care insurance contracts as noted. Renewal policies shall comply with this regulation as amended.

B. Additionally, this regulation is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, if:

1. the benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;

2. the disability income policy is advertised, marketed or offered as insurance for long-term care services; or

3. benefits under the policy may commence after the policyholder has reached Social Security's normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

**§1905. Definitions**

A. For the purpose of this regulation, the terms Applicant, Certificate, Commissioner, Group Long-Term Care Insurance, Long-Term Care Insurance, Policy, and Qualified Long-Term Care Insurance shall have the meanings set forth in R.S. 22:1734. In addition, the following definitions will apply.

**Exceptional Increase**

a. only those increases filed by an insurer as exceptional for which the commissioner determines the need for the premium rate increase is justified:

i. due to changes in laws or regulations applicable to long-term care coverage in this state; or

ii. due to increased and unexpected utilization that affects the majority of insurers of similar products;

b. except as provided in §1937, exceptional increases are subject to the same requirements as other premium rate schedule increases;

c. the commissioner may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase;

d. the commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

**Incidental** (as used in §1937.J) that the value of the long-term care benefits provided is less than 10 percent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

**Qualified Actuary** a member in good standing of the American Academy of Actuaries.

**Similar Policy Forms** all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in R.S. 22:1734(4)(a) are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional

long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

### **§1909. Policy Practices and Provisions**

A. Renewability. The terms *guaranteed renewable* and *noncancellable* shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of §1915 of this regulation.

1. A policy issued to an individual shall not contain renewal provisions other than *guaranteed renewable* or *noncancellable*.

2. The term *guaranteed renewable* may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

3. The term *noncancellable* may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums, during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

4. The term *level premium* may only be used when the insurer does not have the right to change the premium.

5. In addition to the other requirements of §1909.A, a qualified long-term insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

B. Limitations and Exclusions. A policy may not be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

1. preexisting conditions or diseases;
2. mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;
3. alcoholism and drug addiction;
4. illness, treatment, or medical condition arising out of:
  - a. war or act of war (whether declared or undeclared);
  - b. participation in a felony, riot, or insurrection;
  - c. service in the armed forces or units auxiliary thereto;
  - d. suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
  - e. aviation (this exclusion applies only to non-fare paying passengers);
5. treatment provided in a government facility (unless otherwise required by law); services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, or any motor vehicle no-fault law; services provided by a member of the covered person's immediate family, and

services for which no charge is normally made in the absence of insurance;

6. expenses for services or items available or paid under another long-term care insurance or health insurance policy;

7. in the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount;

8. Subsection 1909.B is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

C. Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization, if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

#### D. Continuation or Conversion

1. Group long-term care insurance issued in this state on or after the effective date of §1909 shall provide covered individuals with a basis for continuation or conversion of coverage.

2. For the purposes of §1909, a *basis for continuation of coverage* means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium, when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

3. For the purposes of §1909, a *basis for conversion of coverage* means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

4. For the purposes of §1909, *converted policy* means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers

and/or facilities, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

5. Written application for the converted policy shall be made, and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

6. Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

7. Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

a. termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

b. the terminating coverage is replaced not later than 31 days after termination by group coverage effective on the day following the termination of coverage:

i. providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

ii. the premium for which is calculated in a manner consistent with the requirements of §1909.D.6.

8. Notwithstanding any other provision of §1909, a converted policy issued to an individual who, at the time of conversion, is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

9. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

10. Notwithstanding any other provision of §1909, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

11. For the purposes of §1909, a *managed-care plan* is a health care or assisted living arrangement designed to

coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

E. Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

1. shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced; and

2. shall not vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.

F.1. The premium charged to an insured shall not increase due to either:

a. the increasing age of the insured at ages beyond 65; or

b. the duration the insured has been covered under the policy.

2. The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under §1949, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

3. A reduction in benefits shall not be considered a premium change, but for purposes of the calculation required under §1949, the initial annual premium shall be based on the reduced benefits.

#### G. Electronic Enrollment for Group Policies

1. In the case of a group defined in R.S. 22:1734(4)(a), any requirement that a signature of an insured be obtained by a producer or insurer shall be deemed satisfied if:

a. the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

b. the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

c. the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and "privileged information" as defined by applicable state or federal law, is maintained.

2. The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

#### §1911. Unintentional Lapse

A. - A.1.b. ...

c. When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in §1911.A.1.a need not be met until 60 days after the policyholder or certificateholder is no

longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

d. ...

B. Reinstatement. In addition to the requirement in §1911.A.1, a long-term care insurance policy or certificate shall include a provision which provides for reinstatement of coverage, in the event of lapse, if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured, if requested within five months after termination, and shall allow for the collection of past due premium where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

### **§1913. Required Disclosure Provisions**

A. Renewability. Individual long-term care insurance policies shall contain a renewability provision.

1. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

2. A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

B. Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made, in writing, by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to, in writing and signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider, or endorsement.

C. Payment of Benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as *usual and customary, reasonable and customary* or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

D. Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to pre-existing conditions, such limitations shall appear as a

separate paragraph of the policy or certificate and shall be labeled as "Pre-Existing Condition Limitations."

E. Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy or certificate containing post confinement, post-acute care, or recuperative benefits shall set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate Paragraph of the policy or certificate and shall clearly label such Paragraph, "Limitations or Conditions on Eligibility for Benefits."

F. Disclosure of Tax Consequences. With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider, and at the time the accelerated benefit payment request is submitted, that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. §1913.F shall not apply to qualified long-term care insurance contracts.

G. Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate Paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in §1913. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

H. A qualified long-term care insurance contract shall include a disclosure statement in the policy, and in the outline of coverage as contained in §1955.F.3 that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

I. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in §1955.F.3 that the policy is not intended to be a qualified long-term care insurance contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

### **§1915. Required Disclosure of Rating Practices to Consumers**

A. This Section shall apply as follows.

1. Except as provided in §1915.A.2, §1915 applies to any long-term care policy or certificate issued in this state on or after July 19, 2005.

2. For certificates issued on or after the effective date of this amended regulation under a group long-term care insurance policy as defined in R.S. 22:1734(4), which policy was in force at the time this amended regulation became effective, the provisions of §1915 shall apply on the policy anniversary following January 19, 2006.

B. Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall



provide all of the information listed in §1915.B to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in §1915 to the applicant no later than at the time of delivery of the policy or certificate:

1. a statement that the policy may be subject to rate increases in the future;

2. an explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

3. the premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

4. a general explanation for applying premium rate or rate schedule adjustments that shall include:

a. a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.); and

b. the right to a revised premium rate or rate schedule as provided in §1915.B.3 if the premium rate or rate schedule is changed;

5.a. information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this state or any other state that, at a minimum, identifies:

i. the policy forms for which premium rates have been increased;

ii. the calendar years when the form was available for purchase; and

iii. the amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

b. the insurer may, in a fair manner, provide additional explanatory information related to the rate increases;

c. an insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition;

d. if an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of §1915 or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with §1915.B.5.a of this Paragraph;

e. if the acquiring insurer in §1915.B.5.d above files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in §1915.B.5.d, the acquiring insurer shall make all disclosures required by §1915.B.5, including disclosure of the earlier rate increase referenced in §1915.B.5.d.

C. An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under §1915.B.1 and 5. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

D. An insurer shall use the forms in Appendices B and F to comply with the requirements of §1915.B and §1915.C of this Section.

E. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by §1915.B when the rate increase is implemented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§1917. Initial Filing Requirements**

A. This Section applies to any long-term care policy issued in this state on or after July 19, 2005.

B. An insurer shall provide the information listed in §1917.B to the commissioner 45 days prior to making a long-term care insurance form available for sale:

1. a copy of the disclosure documents required in §1915; and

2. an actuarial certification consisting of at least the following:

a. a statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

b. a statement that the policy design and coverage provided have been reviewed and taken into consideration;

c. a statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

d. a complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

i. sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

ii. a statement that the assumptions used for reserves contain reasonable margins for adverse experience;

iii. a statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and

iv. a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur:

(a) an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

(b) if the gross premiums for certain age groups appear to be inconsistent with this requirement, the

commissioner may request a demonstration under §1917.C based on a standard age distribution; and

e.i. a statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

ii. a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

C.1. The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

2. In the event the commissioner asks for additional information under this provision, the period in §1917.B does not include the period during which the insurer is preparing the requested information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§1919. Requirements to Offer Inflation Protection**

A. - A.3. ...

B. Where the policy is issued to a group, the required offer in §1919.A shall be made to the group policyholder; except, if the policy is issued to a group defined in R.S. 22:1734(4)(d), other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder.

C. ...

D.1. Insurers shall include the following information in or with the outline of coverage:

a. a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period;

b. any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

2. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

E. - F. ...

G.1. Inflation protection, as provided in §1919.A.1, shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection, signed by the policyholder, as required in §1919.G.1. The rejection may be either in the application or on a separate form.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

### **§1921. Prohibition against Post-Claim Underwriting (former §1915)**

A. All applications for long-term care insurance policies or certificates, except those which are guaranteed issue, shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

B.1. If an application for long-term care insurance contains a question which asks whether the applicant has had

medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

2. If the medications listed in such application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

C. Except for policies or certificates which are guaranteed issue:

1. the following language shall be set out conspicuously, and in close conjunction with the applicant's signature block, on an application for a long-term care insurance policy or certificate:

CAUTION: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy;

2. the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

CAUTION: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address];

3. prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

- a. a report of a physical examination;
- b. an assessment of functional capacity;
- c. an attending physician's statement; or
- d. copies of medical records.

D. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate, unless it was retained by the applicant at the time of application.

E. Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the insurance commissioner in the format prescribed by the National Association of Insurance Commissioners in §1961, Appendix A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

### **§1923. Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies (former §1917)**

A. A long-term care insurance policy or certificate shall not, if it provides benefits for home health care or community care services, limit or exclude benefits:

1. by requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

2. by requiring that the insured or claimant first, or simultaneously, receive nursing or therapeutic services, or

both, in a home, community, or institutional setting before home health care services are covered;

3. by limiting eligible services to services provided by registered nurses or licensed practical nurses;

4. by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;

5. by excluding coverage for personal care services provided by a home health aide;

6. by requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

7. by requiring that the insured or claimant have an acute condition before home health care services are covered;

8. by limiting benefits to services provided by Medicare-certified agencies or providers;

9. by excluding coverage for adult day care services.

B. A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

C. Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), repromulgated LR 31:

### **§1925. Requirements for Application Forms and Replacement Coverage (former §1921)**

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer, except where the coverage is sold without a producer, containing such questions may be used. With regard to a replacement policy issued to a group defined by R.S. 22:1734(4)(a), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, provided that the certificateholder has been notified of the replacement.

1. Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

2. Did you have another long-term care insurance policy or certificate in force during the last 12 months?

a. If so, with which company?

b. If that policy lapsed, when did it lapse?

3. Are you covered by Medicaid?

4. Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

B. Producers shall list any other health insurance policies they have sold to the applicant.

1. List policies sold which are still in force.

2. List policies sold in the past five years which are no longer in force.

C. Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant, and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

#### NOTICE TO APPLICANT

REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

#### STATEMENT TO APPLICANT BY PRODUCER

[BROKER OR OTHER REPRESENTATIVE]:

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods. The insurer will waive any time periods applicable to pre-existing conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

\_\_\_\_\_  
 (Signature of Producer, Broker or Other Representative)  
 [Typed Name and Address of Producer or Broker]

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
 (Applicant's Signature)

\_\_\_\_\_  
 (Date)

**D. Direct Response Solicitations.** Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods. Your insurer will waive any time periods applicable to pre-existing conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any

information is not correct and complete, or if any past medical history has been left out of the application.

\_\_\_\_\_  
 (Company Name)

E. Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address, including zip code. Such notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

F. Life Insurance policies that accelerate benefits for long-term care shall comply with this Section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Regulation 70. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

**§1927. Reporting Requirements (former §1923)**

A. Every insurer shall maintain records for each producer of that producer's amount of replacement sales as a percentage of the producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the producer as a percentage of the producer's total annual sales.

B. Each insurer shall report annually, by June 30, the 10 percent of its producers with the greatest percentages of lapses and replacements, as measured by §1927.A. (§1961, Appendix G)

C. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely producer activities regarding the sale of long-term care insurance.

D. Every insurer shall report annually, by June 30, the number of lapsed policies as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the end of the preceding calendar year. (§1961, Appendix G)

E. Every insurer shall report annually, by June 30, the number of replacement policies sold as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the preceding calendar year. (§1961, Appendix G)

F. Every insurer shall report annually, by June 30, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. (§1961, Appendix E)

G. For purposes of §1927:

1. *policy* means only long-term care insurance; and
2. subject to §1927.G.3, *claim* means a request for a payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;
3. *denied* means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet

the waiting period or because of an applicable preexisting condition; and

4. *report* means on a statewide basis.

H. Reports required under this Section shall be filed with the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

#### **§1929. Licensing (former §1925)**

A. A producer is not authorized to market, sell, solicit, or negotiate with respect to long-term care except as authorized by R.S. 22:1133 and R.S. 22:1137(A)(1) and (2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

#### **§1931. Discretionary Powers of Commissioner (former §1927)**

A. The commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

1. the modification or suspension would be in the best interest of the insureds;

2. the purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

3.a. the modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

b. the policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or

c. the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

#### **§1933. Reserve Standards (former §1929)**

A. When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for the benefits shall be determined in accordance with R.S. 22:162, R.S. 22:162.1. and R.S. 22:163. Claim reserves shall also be established in the case when the policy or rider is in claim status.

B. Reserves for policies and riders subject to §1933.B should be based on the multiple decrement model, utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of

long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit, assuming no long-term care benefit.

C.1. In the development and calculation of reserves for policies and riders subject to §1933.C, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations which have an impact on projected claim costs including, but not limited to, the following:

- a. definition of insured events;
- b. covered long-term care facilities;
- c. existence of home convalescence care coverage;
- d. definition of facilities;
- e. existence or absence of barriers to eligibility;
- f. premium waiver provision;
- g. renewability;
- h. ability to raise premiums;
- i. marketing method;
- j. underwriting procedures;
- k. claims adjustment procedures;
- l. waiting period;
- m. maximum benefit;
- n. availability of eligible facilities;
- o. margins in claim costs;
- p. optional nature of benefit;
- q. delay in eligibility for benefit;
- r. inflation protection provisions; and
- s. guaranteed insurability option.

2. Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

D. When long-term care benefits are provided other than as in §1933.A, reserves shall be determined in accordance with prevailing National Association of Insurance Commissioners (NAIC) actuarial standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

#### **§1935. Loss Ratio (former §1931)**

A. This Section shall apply to all long-term care insurance policies or certificates except those covered under §1917 and §1937.

B. Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums, provided the expected loss ratio is at least 60 percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

1. statistical credibility of incurred claims experience and earned premiums;
2. the period for which rates are computed to provide coverage;
3. experienced and projected trends;
4. concentration of experience within early policy duration;
5. expected claim fluctuation;
6. experience refunds, adjustments, or dividends;
7. renewability features;
8. all appropriate expense factors;

9. interest;
10. experimental nature of the coverage;
11. policy reserves;
12. mix of business by risk classification; and
13. product features such as long elimination periods, high deductibles, and high maximum limits.

C. Section 1935.B shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

1. the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
2. the portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of R.S. 22:168;
3. the policy meets the disclosure requirements of R.S. 22:1736(H), (I) and (J);
4. any policy illustration that meets the applicable requirements of Regulation 55; and
5. an actuarial memorandum is filed with the insurance department that includes:
  - a. a description of the basis on which the long-term care rates were determined;
  - b. a description of the basis for the reserves;
  - c. a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
  - d. a description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;
  - e. a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
  - f. the estimated average annual premium per policy and the average issue age;
  - g. a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
  - h. a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

### **§1937. Premium Rate Schedule Increases**

A. This Section shall apply as follows.

1. Except as provided in §1937.A.2, §1937 applies to any long-term care policy or certificate issued in this state on or after July 19, 2005.

2. For certificates issued on or after the effective date of this amended regulation under a group long-term care insurance policy as defined in R.S. 22:1734(4)(a), which policy was in force at the time this amended regulation became effective, the provisions of §1937 shall apply on the policy anniversary following January 19, 2006.

B. An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least 45 days prior to the notice to the policyholders and shall include:

1. information required by §1915;
2. certification by a qualified actuary that:
  - a. if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
  - b. the premium rate filing is in compliance with the provisions of §1937;
3. an actuarial memorandum justifying the rate schedule change request that includes:
  - a. lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;
    - i. annual values for the five years preceding and the three years following the valuation date shall be provided separately;
    - ii. the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;
    - iii. the projections shall demonstrate compliance with §1937.C; and
    - iv. for exceptional increases:
      - (a) the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
      - (b) in the event the commissioner determines as provided in §1905.A.4 that offsets may exist, the insurer shall use appropriate net projected experience;
  - b. disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;
  - c. disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;
  - d. a statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and
  - e. in the event that it is necessary to maintain consistent premium rates for new certificates and certificates

receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

4. a statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

5. sufficient information for review and approval of the premium rate schedule increase by the commissioner.

C. All premium rate schedule increases shall be determined in accordance with the following requirements:

1. exceptional increases shall provide that 70 percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

2. premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

a. the accumulated value of the initial earned premium times 58 percent;

b. eighty-five percent of the accumulated value of prior premium rate schedule increases on an earned basis;

c. the present value of future projected initial earned premiums times 58 percent; and

d. eighty-five percent of the present value of future projected premiums not in §1937.C.2.c on an earned basis;

3. in the event that a policy form has both exceptional and other increases, the values in §1937.C.2.b and d will also include 70 percent for exceptional rate increase amounts; and

4. all present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as defined annually under R.S. 22:163. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

D. For each rate increase that is implemented, the insurer shall file for approval by the commissioner updated projections, as defined in §1937.B.3.a, annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in §1937.K, the projections required by §1937.D shall be provided to the policyholder in lieu of filing with the commissioner.

E. If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in §1937.B.3.a, shall be filed for approval by the commissioner every five years following the end of the required period in §1937.D. For group insurance policies that meet the conditions in §1937.K, the projections required by §1937.E shall be provided to the policyholder in lieu of filing with the commissioner.

F.1. If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions

of premiums specified in §1937.C, the commissioner may require the insurer to implement any of the following:

a. premium rate schedule adjustments; or

b. other measures to reduce the difference between the projected and actual experience.

2. In determining whether the actual experience adequately matches the projected experience, consideration should be given to §1937.B.3.e, if applicable.

G. If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

1. a plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in §1937.H; and

2. the original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to §1937.C had the greater of the original anticipated lifetime loss ratio or 58 percent been used in the calculations described in §1937.C.2.a and c.

H.1. For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

a. the rate increase is not the first rate increase requested for the specific policy form or forms;

b. the rate increase is not an exceptional increase; and

c. the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

2. In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

a. The offer shall:

i. be subject to the approval of the commissioner;

ii. be based on actuarially sound principles, but not be based on attained age; and

iii. provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

b. The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

i. the maximum rate increase determined based on the combined experience; and

ii. the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10 percent.

I. If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of §1937.H of this Section, prohibit the insurer from either of the following:

1. filing and marketing comparable coverage for a period of up to five years; or

2. offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

J. Section 1937.A through I shall not apply to policies for which the long-term care benefits provided by the policy are *incidental*, as defined in §1905.B, if the policy complies with all of the following provisions:

1. the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

2. the portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

- a. R.S. 22:168;
- b. R.S. 22:173.1, and
- c. R.S. 22:1500;

3. the policy meets the disclosure requirements of R.S. 22:1736(H), (I), and (J);

4. the portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

- a. policy illustrations as required by Regulation 55;
- b. disclosure requirements in Regulation 28;

5. an actuarial memorandum is filed with the insurance department that includes:

a. a description of the basis on which the long-term care rates were determined;

b. a description of the basis for the reserves;

c. a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

d. a description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

e. a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

f. the estimated average annual premium per policy and the average issue age;

g. a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or

any dependent will be underwritten and when underwriting occurs; and

h. a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

K. Sections 1937.F and 1937.H shall not apply to group insurance policies as defined in R.S. 22:1734(4)(a) where:

1. the policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

2. the policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20 percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

#### **§1939. Filing Requirement (former §1933)**

A. Prior to a long-term care insurer or other similar organization offering group long-term care insurance to a resident of this state, pursuant to R.S. 22:1735, it shall file with the commissioner evidence that the group meets the requirements of R.S. 22:1734(4)(d); and such insurers shall file for approval any group policy or certificate to be offered to residents of this state, regardless of from where it was issued or delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

#### **§1941. Filing Requirements for Advertising (former §1935)**

A. Every insurer, health care service plan, or other entity providing long-term care insurance or benefits in this state shall provide a copy of any long-term care insurance advertisement intended for use in this state, whether through written, radio, or television medium, to the Commissioner of Insurance of this state for review or approval by the commissioner to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer, health care service plan, or other entity for at least three years from the date the advertisement was first used.

B. The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), repromulgated LR 31:

#### **§1943. Standards for Marketing (former §1937)**

A. Every insurer, health care service plan, or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

1. establish marketing procedures and producer training requirements to assure that:

a. any marketing activities, including any comparison of policies by its producers or other producers will be fair and accurate; and



- b. excessive insurance is not sold or issued;
- 2. display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following:

Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.

- 3. provide copies of the disclosure forms required in §1915.C (Appendices B and F) to the applicant;
- 4. inquire, and otherwise make every reasonable effort to identify, whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness, or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required;
- 5. establish auditable procedures for verifying compliance with §1943.A;
- 6. if the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program, approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that such a program is available and the name, address and telephone number of the program;
- 7. for long-term care health insurance policies and certificates, use the terms *noncancellable* or *level premium* only when the policy or certificate conforms to §1909.A.3 of this regulation;
- 8. provide an explanation of contingent benefit upon lapse provided in §1949.D.3.

B. In addition to the practices prohibited in R.S. 22:1211 et seq., the following acts and practices are prohibited.

**Cold Lead Advertising** Making use directly, or indirectly, of any method of marketing which fails to disclose, in a conspicuous manner, that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.

**High Pressure Tactics** Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

**Misrepresentation** Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

**Twisting** Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

C.1. With respect to the obligations set forth in §1943.C.1, the primary responsibility of an association, as defined in R.S. 22:1734(4)(b), when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues, in general, so that its members can make informed decisions. Associations shall provide objective information regarding long-term care

insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

2. The insurer shall file with the Insurance Department the following material:

- a. the policy and certificate;
- b. a corresponding outline of coverage; and
- c. all advertisements requested by the Insurance Department.

3. The association shall disclose in any long-term care insurance solicitation:

a. the specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

b. a brief description of the process under which the policies, and the insurer issuing the policies, were selected.

4. If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

5. The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

6.a. The association shall also:

i. at the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance, not affiliated with the insurer, to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;

ii. actively monitor the marketing efforts of the insurer and its producers; and

iii. review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

b. Section 1943.C.6.a.i.-iii shall not apply to qualified long-term care insurance contracts.

7. No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the state insurance department the information required in §1943.C.

8. The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in §1943.C.

9. Failure to comply with the filing and certification requirements of §1943 constitutes an unfair trade practice in violation of R.S. 22:1211 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

**§1945. Suitability (former §1939)**

A. Section 1945 shall not apply to life insurance policies that accelerate benefits for long-term care.

B. Every insurer, health care service plan, or other entity marketing long-term care insurance (the *issuer*) shall:

1. develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

2. train its producers in the use of its suitability standards; and

3. maintain a copy of its suitability standards and make them available for inspection, upon request, by the commissioner.

C.1. To determine whether the applicant meets the standards developed by the issuer, the producer and issuer shall develop procedures that take the following into consideration:

a. the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

b. the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

c. the values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

2. The issuer, and where a producer is involved, the producer shall make reasonable efforts to obtain the information set out in §1945.C.1. The efforts shall include presentation to the applicant at, or prior to, application the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than 12-point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the commissioner.

3. A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

4. The sale or dissemination outside the company or agency by the issuer or producer of information obtained through the personal worksheet in §1961, Appendix B, is prohibited.

D. The issuer shall use the suitability standards it has developed, pursuant to §1945, in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

E. Producers shall use the suitability standards developed by the issuer in marketing long-term care insurance.

F. At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in §1961, Appendix C, in not less than 12-point type.

G. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to §1961, Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the

applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

H. The issuer shall report annually to the commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

#### **§1947. Prohibition against Pre-Existing Conditions and Probationary Periods in Replacement Policies or Certificates (former §1941)**

A. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to pre-existing conditions and probationary periods in the new long-term care policy for similar benefits, to the extent that similar exclusions have been satisfied under the original policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), repromulgated LR 31:

#### **§1949. Nonforfeiture Benefit Requirement (former §1943)**

A. Section 1949 does not apply to life insurance policies or riders containing accelerated long-term care benefits.

B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of R.S. 22:1738.

1. A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in §1949.E; and

2. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

C. If the offer required to be made under R.S. 22:1738 is rejected, the insurer shall provide the contingent benefit upon lapse described in §1949.

D.1. After rejection of the offer required under R.S. 22:1738, for individual and group policies without nonforfeiture benefits issued after the effective date of §1949, the insurer shall provide a contingent benefit upon lapse.

2. In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

3. The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the

insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 45 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase	
Issue Age	Percent Increase over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

4. On or before the effective date of a substantial premium increase as defined in §1949.D.3, the insurer shall:

a. offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

b. offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of §1949.E. This option may be elected at any time during the 120-day period referenced in §1949.D.3; and

c. notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in §1949.D.3 shall be deemed to be the election of the offer to convert in §1949.D.4.b above.

E. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in §1949.E.

1. For purposes of §1949, *attained age rating* is defined as a schedule of premiums, starting from the issue date, which increases with increasing age at least 1 percent

per year prior to age 50, and at least 3 percent per year beyond age 50.

2. For purposes of §1949, the nonforfeiture benefit shall be a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in §1949.E.3.

3. The standard nonforfeiture credit will be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of §1949.F.

4.a. The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

b. Notwithstanding §1949.E.4.a, for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

i. the end of the tenth year following the policy or certificate issue date; or

ii. the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

5. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

F. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would have been payable if the policy or certificate had remained in premium paying status.

G. There shall be no difference in the minimum nonforfeiture benefits, as required under §1949, for group and individual policies.

H. The requirements set forth in §1949 shall become effective 12 months after adoption of this provision and shall apply as follows:

1. Except as provided in §1949.H.2, the provisions of §1949 apply to any long-term care policy issued in this state on or after the effective date of this amended regulation.

2. For certificates issued on or after the effective date of §1949, under a group long-term care insurance policy, as defined in R.S. 22:1734(4)(a), which policy was in force at the time this amended regulation became effective, the provisions of §1949 shall not apply.

I. Premiums charged for a policy or certificate containing nonforfeiture benefits or a continuing benefit on lapse shall be subject to the loss ratio requirements of §1935 treating the policy as a whole.

J. To determine whether contingent nonforfeiture upon lapse provisions are triggered under §1949.D.3, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another

insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

K. A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

1. the nonforfeiture provision shall be appropriately captioned;

2. the nonforfeiture provision shall provide that the amount of the benefit available in the event of a default in the payment of any premiums, and the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest, as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and

3. the nonforfeiture provision shall provide at least one of the following:

- a. reduced paid-up insurance;
- b. extended term insurance;
- c. shortened benefit period; or
- d. other similar offerings approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

#### **§1951. Standards for Benefit Triggers (former §1945)**

A. A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

B.1. Activities of daily living shall include at least the following as defined in §1907 and in the policy:

- a. bathing;
- b. continence;
- c. dressing;
- d. eating;
- e. toileting; and
- f. transferring.

2. Insurers may use activities of daily living to trigger covered benefits in addition to those contained in §1951.B.1, as long as they are defined in the policy.

C. An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in §1951.A.-B.

D. For purposes of §1951, the determination of a deficiency shall not be more restrictive than:

1. requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
2. if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

E. Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

F. Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

G. The requirements set forth in §1951 shall be effective January 1, 1999 and shall apply as follows:

1. Except as provided in §1951.G.2, the provisions of §1951 apply to a long-term care policy issued in this state on or after the effective date of the amended regulation.

2. For certificates issued on or after the effective date of §1951, under a group long-term care insurance policy, as defined in R.S. 22:1734(4)(a) that was in force at the time this amended regulation became effective, the provisions of §1951 shall not apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), repromulgated LR 31:

#### **§1953. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts (former §1947)**

A. For purposes of this Section the following definitions apply.

1. Qualified long-term care services means services that meet the requirements of Section 7702B(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

2.a. Chronically ill individual has the meaning prescribed for this term by Section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

- i. being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or
- ii. requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

b. The term *chronically ill individual* shall not include an individual otherwise meeting these requirements unless within the preceding 12-month period a licensed health care practitioner has certified that the individual meets these requirements.

3. Licensed health care practitioner means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

4. Maintenance or personal care services means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

B. A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a

chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

C. A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

D. Certifications regarding activities of daily living and cognitive impairment required pursuant to §1953.C shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

E. Certifications required pursuant to §1953.C may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

F. Qualified long-term care contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

**§1955. Standard Format Outline of Coverage (former §1949)**

A. Section 1955 of the regulation implements, interprets, and makes specific the provisions of R.S. 22:1736(G) in prescribing a standard format and the content of an outline of coverage.

B. The outline of coverage shall be a free-standing document, using no smaller than 10-point type.

C. The outline of coverage shall contain no material of an advertising nature.

D. Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

E. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

F. Format for outline of coverage:

[COMPANY NAME]  
[ADDRESS CITY AND STATE]  
[TELEPHONE NUMBER]  
LONG-TERM CARE INSURANCE  
OUTLINE OF COVERAGE  
[Policy Number or Group Master  
Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

**CAUTION:** The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the

company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).

2. **PURPOSE OF OUTLINE OF COVERAGE.** This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you **READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!**

3. **FEDERAL TAX CONSEQUENCES.**

(a) This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

or

(b) Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. **TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.**

(a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable shall contain the following statement:] **RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE.** This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [company name] cannot change any of the terms of your policy on its own, except that, in the future, **IT MAY INCREASE THE PREMIUM YOU PAY.**

(2) [Policies and certificates that are noncancellable shall contain the following statement:] **RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE.** This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [company name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy:]

(c) [Describe waiver of premium provisions or state that there are not such provisions:]

5. **TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.**

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and

concisely each circumstance under which the premium may change.]

**6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.**

- (a) [Provide a brief description of the right to return "free look" provision of the policy.]
- (b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

**7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.** If you are eligible for Medicare, review the *Medicare Supplement Buyer's Guide* available from the insurance company.

- (a) [For producers] Neither [insert company name] nor its producers represent Medicare, the federal government or any state government.
- (b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

**8. LONG-TERM CARE COVERAGE.** Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home. This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

**9. BENEFITS PROVIDED BY THIS POLICY.**

- (a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]
- (b) [Institutional benefits, by skill level.]
- (c) [Noninstitutional benefits, by skill level.]
- (d) Eligibility for Payment of Benefits

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]

Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

**10. LIMITATIONS AND EXCLUSIONS. (FORMER NUMBER 9)**

[Describe:

- (a) Pre-existing conditions;
- (b) Noneligible facilities and provider;
- (c) Noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions and exceptions;
- (e) Limitations.]

[This Section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in number 9 above.]

**THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.**

**11. RELATIONSHIP OF COST OF CARE AND BENEFITS.**

Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

**12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.**

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

**13. PREMIUM.**

- (a) State the total annual premium for the policy;
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

**14. ADDITIONAL FEATURES.**

- (a) Indicate if medical underwriting is used;
- (b) Describe other important features.]

**15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.**

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

**§1957. Requirement to Deliver Shopper's Guide (former §1951)**

A. A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

1. In the case of producer solicitations, a producer must deliver the shopper's guide prior to the presentation of an application or enrollment form.

2. In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

B. Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under R.S. 22:1736(I).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

**§1959. Penalties (former §1953)**

A. In addition to any other penalties provided by the law, any insurer and any producer found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:

**§1961. Appendices**

A. Appendix A

**RESCISSION REPORTING FORM FOR  
LONG-TERM CARE POLICIES  
FOR THE STATE OF LOUISIANA  
FOR THE REPORTING YEAR 20[ ]**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form Number	Policy and Certificate Number	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Signature

Name and Title (please type)

Date

**B. Appendix B**

**LONG-TERM CARE INSURANCE  
PERSONAL WORKSHEET**

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

**PREMIUM INFORMATION**

Policy Form Numbers \_\_\_\_\_  
 The premium for the coverage you are considering will be [\$ \_\_\_\_\_ per month, or \$ \_\_\_\_\_ per year.] [a one-time single premium of \$ \_\_\_\_\_.]

Type of Policy (noncancellable/guaranteed renewable): \_\_\_\_\_

The Company's Right to Increase Premiums: \_\_\_\_\_  
 [The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

Rate Increase History

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

Questions Related to Your Income

How will you pay each year's premiums?

From my Income    From my Savings/Investments    My Family will Pay

What is your annual income? (check one)

Under \$10,000    \$[10-20,000]    \$[20-30,000]

\$[30-50,000]    Over \$50,000

How do you expect your income to change over the next 10 years? (check one)

No change    Increase    Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7 percent of your income.

Will you buy inflation protection? (check one)    Yes    No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?

From my Income    From my Savings/Investments    My Family will Pay

The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert \$ amount] if costs increase 5% annually.

What elimination period are you considering?

Number of days \_\_\_\_\_ Approximate cost \$ \_\_\_\_\_ for that period of care.

How are you planning to pay for your care during the elimination period? (check one)

From my Income    From my Savings/Investments    My Family will Pay

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)

- Under \$20,000     \$20,000-\$30,000     \$30,000-\$50,000
- Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

- Stay about the same     Increase     Decrease

*If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.*

**Disclosure Statement**

<input type="checkbox"/>	The answers to the questions above describe my financial situation.
<b>Or</b>	
<input type="checkbox"/>	I choose not to complete this information. (Check one.)
<input type="checkbox"/>	I acknowledge that the carrier and/or its producer (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] I understand the above disclosures. <b>I understand that the rates for this policy may increase in the future.</b> (This box must be checked).

Signed: \_\_\_\_\_ (Applicant)                      \_\_\_\_\_ (Date)

I explained to the applicant the importance of completing this information.

Signed: \_\_\_\_\_ (Producer)                      \_\_\_\_\_ (Date)

Producer's Printed Name: \_\_\_\_\_

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My producer has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.]

Signed: \_\_\_\_\_ (Applicant)                      \_\_\_\_\_ (Date)

*The company may contact you to verify your answers.*

**C. Appendix C**

**THINGS YOU SHOULD KNOW BEFORE YOU BUY LONG-TERM CARE INSURANCE**

**Long-Term Care Insurance**

- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.
- [You should **not** buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]
- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

**Medicare**

- Medicare does **not** pay for most long-term care.

**Medicaid**

- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should **not** buy this policy if you are now eligible for Medicaid.
- Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.
- When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.
- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

**Shopper's Guide**

- Make sure the insurance company or producer gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

**Counseling**

- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

**D. Appendix D**

**LONG-TERM CARE INSURANCE SUITABILITY LETTER**

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

- Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.
- No. I have decided not to buy a policy at this time.

Applicant Signature

Date

Please return to [issuer] at [address] by [date].



E. Appendix E

LONG-TERM CARE INSURANCE  
POTENTIAL RATE INCREASE DISCLOSURE FORM

CLAIMS DENIAL REPORTING FORM  
LONG-TERM CARE INSURANCE

For the State of \_\_\_\_\_  
For the Reporting Year of \_\_\_\_\_

Company Name: \_\_\_\_\_ Due: June 30 annually  
Company Address: \_\_\_\_\_

Company NAIC Number: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Line of Business: \_\_\_\_\_ Individual \_\_\_\_\_ Group \_\_\_\_\_

**Instructions**

The purpose of this form is to report all long-term care claim denials under in force long-term care insurance policies. "Denied" means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition.

		State Data	Nationwide Data <sup>1</sup>
1	Total Number of Long-Term Care Claims Reported		
2	Total Number of Long-Term Care Claims Denied/Not Paid		
3	Number of Claims Not Paid due to Preexisting Condition Exclusion		
4	Number of Claims Not Paid due to Waiting (Elimination) Period Not Met		
5	Net Number of Long-Term Care Claims Denied for Reporting Purposes (Line 2 Minus Line 3 Minus Line 4)		
6	Percentage of Long-Term Care Claims Denied of Those Reported (Line 5 Divided By Line 1)		
7	Number of Long-Term Care Claim Denied due to:		
8	• Long-Term Care Services Not Covered under the Policy <sup>2</sup>		
9	• Provider/Facility Not Qualified under the Policy <sup>3</sup>		
10	• Benefit Eligibility Criteria Not Met <sup>4</sup>		
11	• Other		

- The nationwide data may be viewed as a more representative and credible indicator where the data for claims reported and denied for your state are small in number.
- Example **C** home health care claim filed under a nursing home only policy.
- Example **C** a facility that does not meet the minimum level of care requirements or the licensing requirements as outlined in the policy.
- Examples **C** a benefit trigger not met, certification by a licensed health care practitioner not provided, no plan of care.

F. Appendix F

**INSTRUCTIONS:**

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

**Insurers shall provide all of the following information to the applicant:**

- [Premium Rate] [Premium Rate Schedules]:** [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [filed][approved] for an increase [is][are] [on the application][(\$\_\_\_\_\_)]
- The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.**
- Rate Schedule Adjustments:**  
The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): \_\_\_\_\_.
- Potential Rate Revisions:**

**This policy is Guaranteed Renewable.** This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

**If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:**

- Pay the increased premium and continue your policy in force as is.
- Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
- Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
- Exercise your contingent nonforfeiture rights.\* (This option may be available if you do not purchase a separate nonforfeiture option.)

*Turn the Page*

**\*Contingent Nonforfeiture**

If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long-term care insurance coverage, if:

- Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table; and
- You lapse (not pay more premiums) within 120 days of the increase.

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you've paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

**Example:**

- You bought the policy at age 65 and paid the \$1,000 annual premium for 10 years, so you have paid a total of \$10,000 in premium.
- In the eleventh year, you receive a rate increase of 50%, or \$500 for a new annual premium of \$1,500, and you decide to lapse the policy (not pay any more premiums).
- Your "paid-up" policy benefits are \$10,000 (provided you have a least \$10,000 of benefits remaining under your policy.)

*Turn the Page*

Contingent Nonforfeiture Cumulative Premium Increase over Initial Premium That qualifies for Contingent Nonforfeiture	
(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)	
Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

G. Appendix G

**LONG-TERM CARE INSURANCE  
REPLACEMENT AND LAPSE REPORTING FORM**

For the State of \_\_\_\_\_ For the Reporting Year of \_\_\_\_\_  
 Company Name: \_\_\_\_\_ Due: June 30 annually  
 Company Address: \_\_\_\_\_ Company NAIC Number: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone Number: (\_\_\_\_) \_\_\_\_\_

**Instructions**

The purpose of this form is to report on a statewide basis information regarding long-term care insurance policy replacements and lapses. Specifically, every insurer shall maintain records for each producer on that producer's amount of long-term care insurance replacement sales as a percent of the producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the producer as a percent of the producer's total annual sales. The tables below should be used to report the ten percent (10%) of the insurer's producers with the greatest percentages of replacements and lapses.

**Listing of the 10% of Producers with the Greatest Percentage of Replacements**

Producer's Name	Number of Policies Sold By This Producer	Number of Policies Replace By This Producer	Number of Replacements As % of Number Sold By This Producer

**Listing of the 10% of Producers with the Greatest Percentage of Lapses**

Producer's Name	Number of Policies Sold By This Producer	Number of Policies Lapsed By This Producer	Number of Lapses As % of Number Sold By This Producer

**Company Totals**

Percentage of Replacement Policies Sold to Total Annual Sales \_\_\_\_\_ %  
 Percentage of Replacement Policies Sold to Policies In Force  
 (as of the end of the preceding calendar year) \_\_\_\_\_ %  
 Percentage of Lapsed Policies to Total Annual Sales \_\_\_\_\_ %  
 Percentage of Lapsed Policies to Policies In Force  
 (as of the end of the preceding calendar year) \_\_\_\_\_ %

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1736(A), 22:1736(E), 22:1738(C), 22:1739, and 22:1740.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

**Family Impact Statement**

The proposed amendments to LAC 37:XIII, Chapter 19 regarding Long-Term Care Insurance should not have any known or foreseeable impact on any family as defined by R.S. 49:972D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. the ability of the family or a local government to perform the function as contained in the proposed regulation.

A public hearing on this proposed regulation will be held on December 28, 2004, at 9:30 a.m., in the Plaza Hearing Room of the Poydras Building, 1702 North Third Street, Baton Rouge, LA. Interested persons who wish to make comments may do so at the public hearing or by writing to Carol Fowler-Guidry, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business, 4:30 p.m., December 28, 2004. No preamble concerning the proposed regulation is available.

J. Robert Wooley  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Long-Term Care Insurance**

**Title 43**

**NATURAL RESOURCES**

**Part I. Office of the Secretary**

**Subpart 1. General**

**Chapter 19. Louisiana Home Energy Rating  
Subchapter B. Energy Rater Training and Certification  
§1921. Certification of Home Energy Raters**

A. Definitions. For the purpose of this Section, the following words, unless the context does not permit such meaning, shall have the meanings indicated.

*Department* The Louisiana Department of Natural Resources.

*Energy Rating* A site inventory and descriptive record of features impacting the energy use of the building. This includes, but is not limited to: all building component descriptions (locations, areas, orientations, construction attributes and energy transfer characteristics); all energy using equipment and appliance descriptions (use, make, model, capacity, efficiency and fuel type), all energy features and results of tests and computations

*Existing Residential Building* A completed residential occupancy building, including residential occupancy dwellings in mixed occupancy buildings for which a certificate of occupancy, or equivalent approval for occupancy, has been issued.

*New Residential Building* Newly constructed residential occupancy buildings, including new residential occupancy dwellings of single or multifamily occupancy, permitted for construction after the effective date of this Rule.

**B. General Provisions**

1. Rules provided herein shall apply to new and existing residential buildings including single-family and multifamily, site built residential buildings except those specifically exempted herein.

2. The energy rating for new and existing residential buildings shall be determined using only software approved by the Louisiana Department of Natural Resources for the Southern climate. If a rating is performed on a proposed residential building, the rating shall be clearly labeled as a "rating based on plans".

3. Beginning with the implementation date of this Rule, no person may provide a rating for residential buildings in Louisiana unless such a person has been certified as provided by this Rule. To perform a rating for any residential building as required by this Rule, the person performing the rating must be certified by the Louisiana Department of Natural Resources, or its designee.

4. Certification will be valid for one year following the date of issuance. No rating activity shall be conducted after the expiration of the term of certification. A duplicate certificate may be obtained by written request to the department.

5. An application for annual certification renewal shall be submitted on Form #ERHL-704, herein incorporated by reference, with a renewal fee of up to the maximum allowable by the state. In addition to the annual renewal fee,

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No implementation costs to state or local governmental units are expected as a result of Regulation 46, amended. The regulation/amendments bring Louisiana into line with the nationwide National Association of Insurance Commissioners Model. Policy/contract forms and rate increases are already reviewed by DOI.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is not anticipated that implementation of the amendments to Regulation 46 will have any impact upon the revenue collections of state or local governmental units. No additional fines, penalties or fees will result from adoption amendments. The fines, fees, penalties, etc., covered by the amended regulation are already in place.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The adoption of the amendments to Regulation 46 should have no economic benefits to directly affected persons or non-governmental groups. The provisions deal mainly with policy/contract form and rate increase review, which are tasks performed by DOI on an ongoing basis. No additional fines, penalties or fees result from the proposed amendments.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Regulation 46, amended, should have no impact upon employment and competition; it brings Louisiana into compliance with the National Association of Insurance Commissioners Model for Long-term Care Insurance.

Chad M. Brown  
Deputy Commissioner  
Management and Finance  
0411#047

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of the Secretary**

**Louisiana Home Energy Rater Training and Certification  
(LAC 43:I.1921 and 1923)**

In accordance with R.S. 49:950 et seq. and under the authority of R.S. 36:354(E)(2), the Technology Assessment Division of the Louisiana Department Energy Raters may become certified to complete home energy ratings for existing and new residences. The department also wishes to promulgate rules whereby Louisiana Home Energy Raters may receive additional certification from the department to review and rate existing small commercial buildings up to and including 7000 square feet.

a certified home energy rater must, over a three-year period, have completed 12 credit hours of continuing education in courses accepted by the department for certification renewal. Acceptable courses shall, in general, be those dealing with energy use in buildings, building science, or building systems (including heating, ventilation and air conditioning), building design or construction, codes or plan review, financing or selling residential buildings, and courses on energy rating systems).

C. The following qualifications, at a minimum, are required for certification as a home energy rater.

1. The individual shall submit an application on the Louisiana Department of Natural Resources Form #ERHL-704, and pay the appropriate application fee of up to the maximum allowable by the state. The form is available by writing to the Louisiana Department of Natural Resources, 617 N. Third Street Baton Rouge, LA 70804 (the department).

2. Individuals applying for certification as home energy raters shall attend a training program provided by the department, or its designee and shall demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residences by passing department tests specific to residences rated for certification. At the department's discretion, individuals may also qualify for certification without attending the department's training program by providing a certificate of certification as a home energy rater from an accredited training provider approved by the department and passing the department's challenge tests. Individuals applying for certification as home energy raters in this manner must also demonstrate achievement of a level of knowledge and proficiency so as to successfully perform residential energy audits to rate new and existing residential buildings as part of their certification process by performing a minimum of seven home energy ratings, three of which must be performed under the supervision of the department or its designee.

3. No certification shall be approved unless the applicant demonstrates to the department that the following conditions are met.

a. The applicant has filed an accurate and complete application describing compliance with the relevant certification requirements along with the application fee.

b. The applicant is capable of performing the activities for which he/she is seeking certification

c. The applicant has not shown a lack of ability or intention to comply with this rule.

d. The applicant has conducted all energy rating and compliance related activities forthrightly and honestly.

4. Recertification is required at least every three years from the rater's last date of certification. For recertification, the applicant shall attend training on changes impacting the rating system provided by the department or its designee, and demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residential buildings by passing a department test applicable to the buildings being rated. The fee for recertification shall be the annual certification renewal fee. The home energy rater shall be required to satisfactorily perform and complete one home energy rating, accompanied and evaluated by another randomly chosen certified home energy rater, as a requirement for recertification and to comply with the

department's guidelines requirement for periodic peer review and reevaluation of raters. Home energy raters shall also be required to serve as a peer evaluator at least once within three years before being recertified.

D. Reporting Requirements. Certified raters shall submit all ratings to the Louisiana Department of Natural Resources (the department) in electronic format, either via electronic mail (e-mail) or, at the department's discretion with prior written approval from the department, in some other electronic format.

E. The home energy rating report provided to the client shall include the following:

1. the certified rater's signature typed or printed name and rater certification number;

2. the date that the rating was completed; and

3. contact information for the home energy rater including address, and phone number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354(A)(3) and (E)(2).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 31:

### **§1923. Certification of Existing Small Commercial Buildings Energy Raters**

A. Definitions. For the purpose of this Section, the following words, unless the context does not permit such meaning, shall have the meanings indicated.

*Department* The Louisiana Department of Natural Resources.

*Energy Rating* A site inventory and descriptive record of features impacting the energy use of the building. This includes, but is not limited to: all building component descriptions (locations, areas, orientations, construction attributes and energy transfer characteristics); all energy using equipment and appliance descriptions (use, make, model, capacity, efficiency and fuel type); and all energy features, and computations.

*ESCB Energy Raters* This includes all energy raters qualified, trained, and certified by the department to conduct energy ratings on existing small commercial buildings-up to and including 7000 square feet.

*Existing Small Commercial Building (ESCB)* A completed small commercial building, buildings for which a certificate of occupancy, or equivalent approval for occupancy, has been issued-up to and including 7,000 square feet.

#### **B. General Provisions**

1. Rules provided herein shall apply to site built existing small commercial buildings, except those specifically exempted herein.

2. The energy rating for existing small commercial buildings shall be determined using only software approved by the Louisiana Department of Natural Resources for the Southern climate. If a rating is performed on a proposed building, the rating shall be clearly labeled as a "rating based on plans".

3. Beginning with the implementation date of this Rule, no person may provide an energy rating for small commercial buildings in Louisiana unless such a person has been certified as provided by this Rule. To perform an energy rating for any existing small commercial building as required by this Rule, the person performing the energy rating must be certified by the Louisiana Department of Natural Resources, or its designee.

4. Certification will be valid for one year following the date of issuance. No energy rating activity shall be conducted after the expiration of the term of certification. A duplicate certificate may be obtained by written request to the department.

5. An application for annual certification renewal shall be submitted on Form #ERHL-704, herein incorporated by reference, with a renewal fee of the maximum amount allowable by the state. In addition to the annual renewal fee, a certified Existing Small Commercial Building (ESCB) energy rater must, over a three-year period, have completed 12 credit hours of continuing education in courses accepted by the department for certification renewal. Acceptable courses shall, in general, be those dealing with energy use in buildings, building science, or building systems (including heating, ventilation and air conditioning), building design or construction, codes or plan review, financing or selling small commercial buildings, and courses on energy rating systems.

C. The following qualifications, at a minimum, are required for certification as an ESCB energy rater.

1. The individual shall submit an application on the Louisiana Department of Natural Resources Form #ERHL-704 (ESCB) and pay the appropriate application fee of up to the maximum amount allowable by the state. The form is available by writing to the Louisiana Department of Natural Resources, 617 N. Third Street Baton Rouge, LA 70804.

2. Individuals applying for certification as an Existing Small Commercial Building Energy Rater shall attend a training program provided by the department, or its designee and shall demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residences, and small commercial building by passing department tests specific to the buildings rated for certification. At the department's discretion, an individual may also qualify for certification as ESCB energy rater without attending the department's training program by providing a certificate of certification as an ESCB energy rater from an accredited training provider approved by the department and passing the department's challenge tests. Individuals applying for certification as ESCB energy raters in this manner must also demonstrate achievement of a level of knowledge and proficiency so as to successfully rate buildings by passing department tests specific to the type of building rated for certification. In addition, the rater candidate must complete seven ratings, four residential, and three small commercial while conducting three under the supervision of the department or its designee.

3. No certification shall be approved unless the applicant demonstrates to the department that the following conditions are met.

a. The applicant has filed an accurate and complete application describing compliance with the relevant certification requirements along with the application fee.

b. The applicant is capable of performing the activities for which he/she is seeking certification

c. The applicant has not shown a lack of ability or intention to comply with this Rule.

d. The applicant has conducted all energy rating and compliance related activities forthrightly and honestly.

4. Recertification is required at least every three years from the rater's last date of certification. For recertification, the applicant shall attend training on changes impacting the rating system provided by the department or its designee, and demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residential, and small commercial buildings by passing a departmental test applicable to the buildings being rated. The fee for recertification shall be the annual certification renewal fee. The ESCB energy rater shall be required to satisfactorily perform and complete one home, and one small commercial building energy rating, accompanied and evaluated by another randomly chosen certified home energy rater, as a requirement for recertification and to comply with the department's guidelines requirement for periodic peer review and reevaluation of raters. Home energy raters and ESCB energy raters shall also be required to serve as a peer evaluator at least once within three years before being recertified.

D. Reporting Requirements. Certified home energy raters, and ESCB energy raters shall submit all ratings to the Louisiana Department of Natural Resources in electronic format, either via electronic mail (e-mail) or, at the department's discretion with prior written approval from the department, in some other electronic format.

E. The home energy rating report (or ESCB Report) provided to the client shall include the following:

1. the certified rater's signature typed or printed name and rater certification number;

2. the date that the rating was completed; and

3. contact information for the home energy rater including address, and phone number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354(A) (3) and (E) (2).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 31:

#### **Family Impact Statement**

A statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of these proposed amendments will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed amendments will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed amendments will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule.

Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Howard J. Hershberg, A.I.A., Architect Supervisor, or Buddy Justice, Environmental Consultant, at the Department of Natural Resources, 617 North Third Street, Room 1150, Baton Rouge, LA 70804-4156. All comments must be submitted by 4:30 p.m., Friday, December 10, 2004.

Scott Angelle  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Louisiana Home Energy Rater Training  
and Certification**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no expected 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 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 costs and/or direct economic benefits to directly affected persons or non-governmental groups by the proposed rule. Indirect economic benefits to directly affected persons include ensuring credibility of ratings in the state and fraud prevention through quality control and certification of qualifications of parties to perform energy ratings.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no effect on competition and employment by the proposed rule.

Scott A. Angelle  
Secretary  
0411#042

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT  
Department of Revenue  
Policy Services Division**

Electronic Funds Transfer  
(LAC 61:I.4910)

Under the authority of R.S. 47:1511 and 47:1519 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4910, which pertains to the requirement to make payments by electronic funds transfer, to revise the definition of "other immediately investible funds" to include credit and debit card payments and electronic checks and to provide that the taxpayer is responsible for payment of any fee charged for making payment by means defined as other immediately investible funds.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 49. Tax Collection**

**§4910. Electronic Funds Transfer**

A. - A.4. ...

B. Definitions. For the purposes of this Section, the following terms are defined.

\* \* \*

*Other Immediately Investible Funds* Cash, money orders, credit and debit card payments, bank drafts, certified checks, teller's checks, electronic checks, and cashier's checks. The taxpayer is responsible for payment of any fee charged for making payment by means defined in this Paragraph as other immediately investible funds.

\* \* \*

C. - E.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 19:1032 (August 1993), repromulgated LR 19:1340 (October 1993), amended LR 20:672 (June 1994), LR 23:448 (April 1997), amended by the Department of Revenue, Office of the Secretary, LR 25:2442 (December 1999), amended by the Department of Revenue, Policy Services Division, LR 28:866 (April 2002), LR 29:2854 (December 2003), LR 31:

**Family Impact Statement**

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Linda Denney, Senior Policy Consultant, Policy Services Division, Department of Revenue, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759.

All comments must be submitted by 4:30 p.m., Tuesday, December 28, 2004. A public hearing will be held on Wednesday, December 29, 2004, at 1 p.m. in the River Room on the 7th Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Electronic Funds Transfer**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This proposed amendment, which revises the electronic funds transfer definition of "other immediately investible funds" to include credit and debit card payments and electronic checks and provides that the taxpayer is responsible for payment of any fee charged for making payment, will have negligible effect on the Department's costs.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This proposed amendment to allow taxpayers to make electronic fund payments by credit and debit cards and electronic checks will have no impact on the revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Taxpayers that make electronic fund payments by credit and debit cards and electronic checks will be responsible for payment of any fee charged for making payment by that method. The taxpayer cost should be minimal, approximately 2.5 percent of the payment amount for credit and debit card payments, and the taxpayer is free to elect another payment method to avoid the cost.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed amendment should not effect competition or employment.

Cynthia Bridges  
Secretary  
0411#040

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of Community Services**

**Developmental and Socialization Activities Program for Foster Children (LAC 67:V.3507)**

In accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Social Services, Office of Community Services, proposes to adopt Rule LAC 67:V, Subpart 5, Foster Care, Chapter 35, Payments, Reimbursements, and Expenditures, §3507, Developmental and Socialization Activities Program for Foster Children. This Rule was effected July 7, 2004, by Declaration of Emergency published in the July 2004 issue of the *Louisiana Register*, and, continued effective November 4, 2004, by Declaration of Emergency published in the October 2004 issue of the *Louisiana Register*.

**Title 67**

**SOCIAL SERVICES**

**Part V. Community Services**

**Subpart 5. Foster Care**

**Chapter 35. Payments, Reimbursables, and Expenditures**

**§3507. Developmental and Socialization Activities Program for Foster Children**

A. The Department of Social Services, Office of Community Services will only provide for separate reimbursement or expenditure of the cost of organized developmental and socialization activities and related items for foster children ages 6 through 17 who reside in a foster home setting, certified and non-certified. This reimbursement or expenditure for developmental and socialization activities and related items is separate from the board rate in order to improve self-esteem and appropriate peer interaction for foster children and to prevent out-of-wedlock pregnancies. The activities shall address specific areas of need such as building self-confidence, physical coordination, or improving peer interactions.

B. Eligibility is limited to foster children ages 6 through 17, who are in a foster home setting, certified or non-certified.

C. The maximum allowable amount for a child is limited to \$300 a calendar year based on the availability of TANF funding. The child must be at least six years old at the beginning of the calendar year for the \$300 maximum allowable to be available.

D. The allowable activities and related items must be purposefully planned by the foster care worker and the child's foster parent to meet a specific need that is addressed in the case plan for the child. It is not planned that every child will have an identified need that can be met only through reimbursement or expenditure under this program. The foster care worker and foster parent shall discuss the child's developmental and socialization activity needs and the available resources to meet the child's needs. Only when there is no other feasible resource to meet the child's developmental and socialization activity needs will TANF funds be utilized.

E. The allowable activities include such activities as summer camps; community organization/church/school sponsored trips; memberships in organizations, such as Scouts or community sports teams and similar activities; and self-improvement or skill development classes, such as music, art, dance, gymnastics, and swimming lessons. Musical instruments, supplies and safety devices or equipment, specialized clothing, and other related items required to participate in these activities are allowable for reimbursement or expenditure under this program in addition to the cost of the activity.

AUTHORITY NOTE: Promulgated in accordance with 42 U. S. C. 601 et seq.; R.S. 46:231, R.S. 36:474, R.S. 36:476 and 477, and R.S. 46:51.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 31:

**Family Impact Statement**

1. The Effect on the Stability of the Family. By providing appropriate developmental and socialization activities to improve self-esteem and appropriate peer interaction, foster children will have opportunities to learn

and grow into mature adults who can provide safe and stable families for future generations.

2. The Effect on the Authority and Rights of Parents Regarding Education and Supervision of Their Children. Developmental and Socialization Activities Program services are provided only to children who have been removed by court order from their parent's custody to protect the safety and well being of the child. If the court has not terminated parental rights, the parents as well as the foster parents participate in case planning for services needed by the child.

3. The Effect on the Functioning of the Family. The provision of Developmental and Socialization Activities Program services for foster children ages 6 through 17 placed in family homes will enhance the functioning of the family unit and promote stable family life. Through the child's participation in activities, the foster parents will be provided respite from full time childcare. The child will develop healthy relationships with responsible adult leaders of community activities for children as well as peer relationships in order to prevent teenage, out-of-wedlock pregnancies.

4. The Effect on Family Earnings and Family Budget. The provision of developmental and socialization activities for children will assist foster families who might not otherwise be able to afford for the child to participate in community activities such as Scouting or community team sports.

5. The Effect on the Behavior and Personal Responsibility of Children. The participation in organized activities is to improve self-esteem and appropriate peer interaction for foster children and to prevent out-of-wedlock pregnancies. The activities shall address specific areas of need such as building self-confidence, physical coordination, or improving peer interactions.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The program is to provide activities that the family could not afford to offer the foster child and that are not otherwise available through community resources.

All interested persons may submit written comments through Tuesday, November 30, 2004, to Marketa Garner Gautreau, Assistant Secretary, Office of Community Services, P.O. Box 3318, Baton Rouge, LA 70821.

Ann Silverberg Williamson  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Developmental and Socialization Activities Program for Foster Children**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The Office of Community Services (OCS) will expend \$325,000 of Temporary Assistance to Needy Families (TANF) funds to meet the federal goal requirement to prevent out of wedlock pregnancies by funding the Developmental and Socialization Activities Program for Foster Children, affecting foster children who are ages six through seventeen. A minimum of 1083 foster children can be served with the funds made available. The minimal cost of publishing rulemaking is

approximately \$136. The total estimated implementation cost is approximately \$325,136. Administrative costs for publishing the rulemaking item will be absorbed through the existing budget for the purpose of advertising in the *Louisiana Register*.

There are no savings to state or local government units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no immediate costs or economic benefits to any persons or non-governmental groups. Originally there were no funds for these services due to reductions in the FY 2004-2005 operating budget for the OCS. This transfer of TANF funds will allow services to be delivered, although, fewer foster children will be served than in prior years.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no impact on competition and employment.

Marketa Garner Gautreau  
Assistant Secretary  
0411#058

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

#### **TANF Initiatives, Adoptions, Amendments and Repeals (LAC 67:III.Chapters 55 and 56)**

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to repeal LAC 67:III, Subpart 15, Chapter 55, §§5501, 5509-5513, 5525, 5527, 5533, 5537, 5539, 5547, 5553, 5557, 5567, 5569, 5577 and Chapter 56, Diversion Assistance Program, in its entirety. The agency also proposes to adopt §5581, Earned Income Tax Credit as a new TANF Initiative and to amend §§5545, 5549, 5563, and 5573 to remove language referencing legal guardians in the criteria for eligibility; §5541, Court-Appointed Special Advocates, to remove specific language regarding the TANF partner who will be administering the program; and §5561, Child-Parent Enrichment Services Program, to specify the public awareness portion of this quality child care initiative program.

Pursuant to Act 1 of the 2004 Regular Session of the Louisiana Legislature, the agency proposes to repeal several of the TANF Initiatives, as funding is no longer available for these programs. Section 5581 is being adopted to promote a public awareness and training program regarding the benefits of claiming the Earned Income Tax Credit and §§5541 and 5561 are being amended as noted above. These amendments were effected by a Declaration of Emergency signed September 30, 2004, and published in the October issue of the *Louisiana Register*.

Section 263.2(b)(2) of the Temporary Assistance for Needy Families (TANF) regulations indicates that benefits or services count as Maintenance of Effort (MOE) only if the eligible family "includes a child living with a custodial parent or other adult caretaker relative." MOE funds cannot



be claimed on benefits or services provided to a family that includes a child living with a legal guardian, unless that legal guardian is the parent or other caretaker relative. Therefore, the agency is amending §§5545, 5549, 5563, and 5573 to remove language referencing legal guardians in the criteria for eligibility. A Declaration of Emergency signed August 16, 2004, and published in the September 2004 issue of the *Louisiana Register* effected these amendments.

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part III. Family Support**

#### **Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives**

#### **Chapter 55. TANF Initiatives**

#### **§5501. Starting Points Early Childhood Development Program**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:2265 (December 2001), amended LR 29:715 (May 2003), repealed LR 31:

#### **§5509. Domestic Violence Services**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002), amended LR 30:501 (March 2004), repealed LR 31:

#### **§5511. Micro-Enterprise Development**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 28:2373 (November 2002), repealed LR 31:

#### **§5513. Post-Release Skills Program**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002), amended LR 29:715 (May 2003), repealed LR 31:

#### **§5525. Pre-GED/Skills Option Program**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), amended LR 30:501 (March 2004), repealed LR 31:

#### **§5527. Program Evaluation, Comprehensive Needs Assessment, and Training**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), repealed LR 31:

#### **§5533. Transportation Services**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), LR 29:190 (February 2003), repealed LR 31:

#### **§5537. Education and Training**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), repealed LR 31:

#### **§5539. Truancy Assessment and Service Centers**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 30:502 (March 2004), repealed LR 31:

#### **§5541. Court-Appointed Special Advocates**

A. OFS shall enter into Memoranda of Understanding to provide services to needy children identified as abused or neglected who are at risk of being placed in foster care or, are already in foster care. Community advocates provide information gathering and reporting, determination of and advocacy for the children's best interests, and case monitoring to provide for the safe and stable maintenance of the children or return to their own home.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 1, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 31:

#### **§5545. Remediation and Tutoring Programs**

A. - B. ...

C. Eligibility for services is limited to families which include a minor child living with a custodial parent or an adult caretaker relative. A family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch is eligible.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 31:

#### **§5547. Housing Services**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 28:2374 (November 2002), repealed LR 31:

**§5549. OCS Child Welfare Programs (Effective April 12, 2002)**

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at risk of abuse or neglect. Subsequent to the authorization of the U.S. Department of Health and Human Services, Administration for Children and Families, regarding TANF Maintenance of Effort funds, the agency will identify eligible services retroactive to January 1, 2002. The methods of collaboration include:

1. ...

2. *Family Service* comprises services to a child or children and their parents or adult caretaker relatives after an allegation of child neglect or abuse has been validated, to assist in preventing the removal of a child from his care giver or, where temporary emergency removal has already occurred in validated abuse and/or neglect cases, to help reunite the family by returning the child. Services are also provided to a family who requests protective services on its own when it is believed that a child in the family would be at risk. Elements of Family Services include problem identification, family assessment, risk assessment, safety planning, case planning, counseling, problem resolution, provision of or arrangements for needed services, and/or concrete aid through the Preventive Assistance Fund.

B. ...

C. Financial eligibility for those services attributable to TANF/Maintenance of Effort funds is limited to needy families which include a minor child living with a custodial parent or an adult caretaker relative. A needy family is a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:2374 (November 2002), amended LR 31:

**§5553. Substance Abuse Treatment Program for Office of Community Services Clients (Effective July 1, 2002)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2375 (November 2002), repealed LR 31:

**§5557. Energy Assistance Program for Low-Income Families (Effective July 1, 2002)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2375 (November 2002), repealed LR 31:

**§5561. Child-Parent Enrichment Services and Public Awareness Program (Effective September 30, 2004)**

A. The Department of Social Services, Office of Family Support, shall enter into Memoranda of Understanding or contracts to create quality, early childhood education and parenting programs at various sites, such as schools, Head Start Centers, churches, and Class A Day Care Centers to provide children with age-appropriate services during the school year, school holidays, summer months and before-and-after school and to provide parents, legal guardians, or caretaker relatives of children with parenting and adult/family educational services. A Public Awareness Program will develop public education materials for parents, providers, professionals, and interested parties to: promote applications for CCAP; assist providers; encourage eligible families to apply for services offered through OFS; and educate parents and others who have an interest in children and families about criteria of quality child care and the needs of young children.

B. Services offered by providers meet the TANF goals to prevent and reduce the incidence of out-of-wedlock births by providing supervised, safe environments for children thus limiting the opportunities for engaging in risky behaviors, and to encourage the formation and maintenance of two-parent families by providing educational services to parents or other caretakers to increase their own literacy level and effectiveness as a caregiver, and to foster positive interaction with their children.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:190 (February 2003), amended LR 31:

**§5563. Substance Abuse Treatment Program for Needy Families**

A. - B. ...

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, or who has earned income at or below 200 percent of the federal poverty level. A needy family includes a non-custodial parent or caretaker relative who has earned income at or below 200 percent of the federal poverty level.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:190 (February 2003), amended LR 31:

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

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:191 (February 2003), repealed LR 31:

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

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:191 (February 2003), repealed LR 31:

**§5573. Community Supervision Program**

A. - D. ...

E. Financial eligibility for those services attributable to TANF/Maintenance of Effort (MOE) funds is limited to eligible families, which include a minor child living with a custodial parent or an adult caretaker relative. An eligible family is one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title XIX (Medicaid) Medical Assistance Program benefits, Louisiana Children's Health Insurance Program (LACHIP) benefits, or Supplemental Security Income (SSI).

F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:2511 (November 2003), amended LR 31:

**§5577. Skills Training For Incarcerated Fathers**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:502 (March 2004), repealed LR 31:

**§5581. Earned Income Tax Credit (EITC)**

A. The agency has entered into contracts to provide a public awareness and education regarding the benefits of claiming the Earned Income Tax Credit (EITC). Strategies include collaboration with the IRS and the expansion of existing outreach activities that work in conjunction with free taxpayer assistance.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is not limited to needy families.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 1, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:

**Chapter 56. Diversion Assistance Program (DAP)**

**§5601. General Authority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

**Subchapter A. Application, Determination of Eligibility,  
and Furnishing Assistance**

**§5603. Application Date**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

**§5605. Standard Filing Unit**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

**§5607. Application Time Limit**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

**§5609. Certification Period and Payment Amounts**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

**§5611. Domestic Violence**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

**Subchapter B. Conditions of Eligibility**

**§5613. Citizenship**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

**§5615. Enumeration**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

**§5617. Living in the Home of a Qualified Relative**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

#### **§5619. Income**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

#### **§5621. Residency**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:

#### **§5623. Resources**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:

#### **§5625. Work Requirements**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:

#### **§5627. Job Loss Factors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:

#### **§5629. Fleeing Felons and Probation/Parole Violators**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2569 (December 2002), repealed LR 31:

#### **§5631. Strikers**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2569 (December 2002), repealed LR 31:

### **Family Impact Statement**

1. What effect will this Rule have on the stability of the family? Implementation of this Rule should have no impact on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule should have no impact on family functioning.

4. What effect will this have on family earnings and family budget? The proposed Earned Income Tax Credit

Program should have a positive impact on an eligible family's earnings and budget.

5. What effect will this have on the behavior and personal responsibility of children? The Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through December 29, 2004, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA, 70804-9065.

A public hearing on the proposed Rule will be held on December 29, 2004, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 225-342-4120 (Voice and TDD).

Ann Silverberg-Williamson  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: TANF Initiatives Adoptions, Amendments and Repeals**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will result in a \$351,362 increase in expenditures for fiscal year 04/05. In the current year, \$350,000 in TANF Funds have been allocated for the implementation and administration of the Earned Income Tax Credit (EITC) Program which is being adopted to promote a public awareness and training program regarding the benefits of claiming the earned income tax credit. There are no associated costs to state or local governmental units for repealing the TANF Initiatives at §§5501, 5509-5513, 5525, 5527, 5533, 5537, 5539, 5547, 5553, 5557, 5567, 5569, 5577 and Chapter 56, Diversion Assistance Program, and for amending §§5545, 5549, 5563, and 5573 to remove language referencing legal guardians in the criteria for eligibility. The cost of publishing rulemaking is approximately \$1,632. The total estimated implementation cost is approximately \$351,632.

There are no savings to state or local governmental units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the EITC Program could result in an increase of \$1,426,869 in revenue for local governmental units in the form of sales tax. The above projection is based on the assumption that 100 percent of the unclaimed refunds would be claimed. It is highly probable that less than 100 percent will actually be claimed. The remaining proposed changes will have no effect on the 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 costs to any persons or non-governmental groups as a result of this rule.

The proposed Earned Income Tax Credit (EITC) Program should have a positive economic impact on those individuals eligible for the credit. Internal Revenue Service sources estimate that there were 93,022 eligible non-participants that could have filed EITC claims totaling \$81,187,441, for an average refund of \$873 per claimant.

The remaining TANF Initiatives provide assistance to eligible clients in the form of services, which has no immediate impact on the person's income. The services offered through the programs that are affected by this proposed rule will continue with a long-term goal of improving the economic situations of the targeted families.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Adren O. Wilson  
Assistant Secretary  
0411#060

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Social Services Office of Family Support

TANF Initiatives Developmental and Socialization  
Activities Program for Foster Children (LAC 67:III.5579)

In accordance with R.S.49: 950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to adopt §5579, Developmental and Socialization Activities Program for Foster Children, as a new TANF Initiative.

Children placed in foster care have been abused and/or neglected and frequently have difficulty interacting with peers and adults. When children enter foster care, they may be developmentally delayed or socially deprived in that they have not been exposed to activities such as camps, sports, and self-improvement and skill lessons. The purpose of the Developmental and Socialization Activities Program is to provide these types of activities for foster children ages 6 through 17 who are in foster homes. The better able these children are to relate to others, the more likely they are to achieve in school, adjust to their foster home and new neighborhood, and avoid premature sexual activity and out-of-wedlock pregnancies.

The agency will provide funding through a Memorandum of Understanding, to the Office of Community Services for implementation and administration of this TANF Initiative program. Monies may be spent for the child to participate in formalized developmental or socialization activities including summer camps; community organization/church/school sponsored trips; membership in organizations like Scouts or community sports teams and similar activities; self improvement or skill classes in music, art, dance, gymnastics, or other physical development activities, including swimming lessons; and instruments, supplies, and specialized clothing required to participate in these activities. These developmental and socialization activities will improve self-esteem and appropriate peer interaction thereby reducing the likelihood of out-of-wedlock pregnancies.

This Rule was effected July 7, 2004, by a Declaration of Emergency published in the July issue of the *Louisiana Register*.

### Title 67

### SOCIAL SERVICES

#### Part III. Family Support

#### Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

#### Chapter 55. TANF Initiatives

#### §5579. Developmental and Socialization Activities

##### Program for Foster Children

A. Effective July 7, 2004, OFS shall enter into a Memorandum of Understanding (MOU) with the Office of Community Services (OCS), to provide funds to assist in addressing a foster child's developmental or socialization needs through organized activities. The activities shall address specific areas such as building self-confidence, physical coordination, or improving peer interactions.

B. Eligibility for services is limited to foster children age 6 through 17, who are in a certified or non-certified foster home.

C. These services meet the TANF goal to reduce out-of-wedlock pregnancies by providing appropriate developmental and socialization activities that will improve self-esteem and appropriate peer interaction.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:

##### Family Impact Statement

1. What effect will this Rule have on the stability of the family? The stability of the family will be unaffected by this Rule.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? The Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? The Rule will have no effect on family earnings and budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule could have a positive impact on a child's behavior and personal responsibility, as the main objective of the program is to provide developmental and socialization activities that will improve self-esteem and appropriate peer interaction.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through December 29, 2004, to Adren O. Wilson, Assistant Secretary, Office of Family Support, and P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed Rule will be held on December 29, 2004, at the Department of Social Services,

A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 225-342-4120 (Voice and TDD).

Ann S. Williamson  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: TANF Initiatives Development and Socialization Activities Program for Foster Children**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will result in a \$325,136 increase in the expenditures for fiscal year 04/05.

\$325,000 in Temporary Assistance for Needy Families (TANF) funds has been allocated to the implementation and administration of the Developmental and Socialization Activities Program for Foster Children. The minimal cost of publishing rulemaking is approximately \$136. The total estimated implementation cost is approximately \$325,136.

There are no savings to state or local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will result in revenue collections totaling \$325,000. This amount will be transferred to the Office of Community Services for implementation of the program.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is no immediate cost or economic benefit to any persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no impact on competition and employment.

Adren O. Wilson  
Assistant Secretary  
0411#059

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Transportation and Development  
Office of Highways/Engineering**

Control of Outdoor Advertising  
(LAC 70:III.Chapter 1)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to amend Subchapter C of Chapter 1 of Part III of Title 70 entitled "Regulations for Control of Outdoor Advertising," in accordance with R.S. 48:461, et seq.

**Title 70**

**TRANSPORTATION**

**Part III. Outdoor Advertising**

**Chapter 1. Outdoor Advertising**

**Subchapter C. Regulations for Control of Outdoor Advertising**

**§127. Definitions**

\*\*\*

*Grandfathered Non-Conforming Sign* Can outdoor advertising sign in place at the time that a roadway became part of the National Highway System or Federal Aid Primary Highway System, subject to control of outdoor advertising rules, which could not obtain a permit due to regulations in effect at the time that the roadway became subject to outdoor advertising control.

*Legal Non-Conforming Sign* Can outdoor advertising sign which when permitted by the department met all legal requirements, but does not meet current requirements of law.

\*\*\*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 48:461 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, LR 2:187 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:872 (April 2002), LR 31:

**§135. Measurements for Spacing**

A. - C. ...

D. For continuous ramps which start at one entrance and end at the next exit, the allowable spacing shall be measured from the intersection of the edge of the mainline shoulder and the edge of the ramp shoulder; or in the case of bridges, the measurement would be taken where the mainline and the ramp bridge rails meet. This provision shall apply to §134.B.1 and 2.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 48:461 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, LR 2:188 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:

**§136. Erection and Maintenance of Outdoor Advertising in Unzoned Commercial and Industrial Areas**

A. Definitions

\*\*\*

*Unzoned Commercial or Industrial Areas* Those areas which are not zoned by state or local law, regulation, ordinance and on which there are located one or more permanent structures within which a commercial or industrial business is actively conducted.

a. Repealed.

b. Repealed.

B. Qualifying Criteria

1. Primary Use Test

a. The business must be equipped with all customary utilities and must be open to the public regularly or be regularly used by employees of the business as their principal work stations.

b. The primary use or activity conducted in the area must be of a type customarily and generally required by local comprehensive zoning authorities in this state to be

restricted as a primary use to areas which are zoned industrial or commercial.

c. The fact that an activity may be conducted for profit in the area is not determinative of whether or not an area is an *unzoned commercial or industrial area*. Activities incidental to the primary use of the area, such as a kennel or repair shop in a building or on property which is used primarily as a residence, do not constitute commercial or industrial activities for the purpose of determining the primary use of an *unzoned* area even though income is derived from the activity.

d. If, however, the activity is primary and local comprehensive zoning authorities in this state would customarily and generally require the use to be restricted to a commercial or industrial area, then the activity constitutes a commercial or industrial activity for purposes of determining the primary use of an area, even though the owner or occupant of the land may also live on the property.

### 2. Visibility and Measurement Test

a. The area along the highway extending outward 800 feet from and beyond the edge of such activity shall also be included in the defined area.

b. The purported commercial or industrial activity must be visible from the main-traveled way within the boundaries of that unzoned commercial or industrial area by a motorist of normal visual acuity traveling at a maximum posted speed limit on the main traveled way of the highway. Visibility will be determined at the time of the field inspection by the department's authorized representative.

c. Each side of the highway will be considered separately. All measurements shall be from the outer edge of the regularly used buildings, designated parking lots, or processing areas of the commercial and industrial activity and shall not be made from the property lines of the activities. The measurement shall be along or parallel to the edge of the pavement of the highway.

### 3. Structures and Grounds Requirements

a. - f. ...

g. Limits. Limits of business activity shall be in accordance with the definition of Unzoned commercial or industrial areas as stated in §136.B.2.a.

h. - i. ...

### D. Non-Qualifying Activities

1. - 11. ...

### 12. Public park lands or playgrounds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 25:880 (May 1999), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:

## §139. Determination of On-Premise Exemptions

A. - B. ...

### C. Public Facility Sign Restrictions

1. Signs on the premises of a public facility, including but not limited to the following: schools, civic centers, coliseums, sports arenas, parks, governmental buildings and amusement parks, that do not generate rental income to the owner of the public facility may advertise:

a. the name of the facility, including sponsors of the public sign; and

b. principal or accessory products or services offered on the property and activities conducted on the property as permitted by 23 CFR 750, 709, including:

i. events being conducted in the facility or upon the premises, including the sponsor of the current event; and

ii. products or services sold at the facility and activities conducted on the property that produce significant income to the operation of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 2:189 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:

## §143. Procedure and Policy for Issuing Permits for Controlled Outdoor Advertising

A. - L. ...

M. When a permitted outdoor advertising sign or device is knocked down or destroyed, or modified, the sign or device cannot be reinstalled or rebuilt without first obtaining a new outdoor advertising permit pursuant to the procedures established in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461, et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 2:191 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:

## §150. Removal of Unlawful Advertising

A. If the owner of any sign erected in violation of this Part fails to comply with the provisions listed herein within 30 days of receipt of notice issued by the Louisiana Department of Transportation and Development, as provided in R.S. 48:461.7, that sign shall be removed by the department or its agent at the expense of the owner, except if said sign is within highway right-of-way, in which case the provisions of R.S. 48:347 shall apply.

B. Upon removal of the device by the department, the sign owner, landowner or other person responsible for erecting the sign shall pay the cost of removal to the department. The department shall store the sign for 30 days immediately following removal, during which time the sign may be claimed upon payment of the cost of removal and any costs associated with the removal and storage of the sign and collection of the cost of removal.

C. A sign which is not claimed within 30 days after removal shall be deemed the property of the department and may be disposed of by the department.

D. Any money received from the disposal of the device will be credited first to the cost of removal and storage of the device. Revenue in excess of such costs will be deposited by the secretary of the department in the state treasury.

E. If the revenue generated from disposal of the device does not meet or exceed the cost of removal and storage of the device, then the owner of the device, the landowner or other person responsible for erecting the device shall pay the remaining costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 20:796 (July 1994), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:

**§155. Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.2(A)(7) and R.S. 48:461.7.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 20:796 (July 1994), repealed by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:

**Family Impact Statement**

The proposed adoption of this Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.
2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.
3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.
4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.
5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.
6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, Senior Attorney, P. O. Box 94245, Baton Rouge, LA 70804, Telephone (225) 237-1359.

J. Michael Bridges, P.E.  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Control of Outdoor Advertising**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs associated with this proposed rule. Technical changes are being made in existing rules to place the Department in compliance with Federal law and make the rules more clear and workable for both the Department and the outdoor advertising industry. The rules on methods of measurement should expand the number of legal available sign locations. The rules on zoning should have no impact on the current number of signs. The rules on public facility signs should reduce the number of current illegal signs while placing the State in compliance with Federal law. No additional personnel will be necessary. The actual cost of removal of illegal signs and the actual cost of storage of the signs for sixty days shall be collected from the owners of the illegal signs. If such signs are abandoned, then the Department shall be authorized to dispose of the devices and credit any monies received to the cost of removal, with any excess monies to be deposited in the State Treasury as self-generated revenues.

The Department has estimated that approximately three illegal or non-conforming large steel pole signs will be removed each year at a cost of \$16,000.00 per sign (\$48,000.00 total). Storage could amount to \$150.00 for 30 days (\$450.00 total) all of which should be reimbursed by the owner of the sign. These signs are valued at \$40,000.00 each (\$120,000.00 total), however it is unlikely that they would be abandoned by the owners. Approximately 15 illegal or non-conforming wooden signs will be removed each year at a cost of \$250.00 per sign (\$3,750.00 total). The Department will seek reimbursement of this cost from the owner of the sign. (No value can be attributed to these signs and there would be no storage cost.)

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be a positive effect on self-generated revenue collection of the Department because costs heretofore not collected by the Department will be collected for sign removal, storage and/or disposal.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The outdoor advertising industry will be most directly affected by this rule change. The proposed rules on measurement should expand the number of available legal locations. The rules on public facility signs will restrict certain signage. The industry will also be subject to specific costs for removal, storage and disposal of illegal signs as outlined in Paragraph I. All of these costs will be actual costs and will be invoiced on a case-by-case basis.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There should be a positive effect on competition and employment for the owners of outdoor advertising devices. The number of new legal locations should far outnumber the restrictions on illegal signs.

J. Michael Bridges, P.E.  
Undersecretary  
0411#054

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Transportation and Development  
Office of Highways/Engineering**

Outdoor Advertising  
(LAC 70:III.103-109)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Louisiana Department of Transportation and Development intends to amend Subchapter A of Chapter 1 of Part III of Title 70 entitled "Outdoor Advertising." This Rule deals specifically with "Specific Services (LOGO) Signing." It is promulgated in accordance with the provisions of R.S. 48:461.

**Title 70**

**TRANSPORTATION**

**Part III. Outdoor Advertising**

**Chapter I. Outdoor Advertising**

**Subchapter A. Outdoor Advertising Signs**

**§103. Definitions**

A. Except as defined in this Paragraph, the terms used in this Rule shall be defined in accordance with the definitions and usage of the Louisiana Manual on Uniform Traffic Control Devices (MUTCD).



\* \* \*

Specific Information Signs ground mounted rectangular sign panel with:

- a. the words "GAS," "FOOD," "LODGING," "CAMPING," or "ATTRACTIONS;"
- b. directional information;
- c. one or more business signs.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:784 (July 1992), LR 19:352 (March 1993), by the Department of Transportation and Development, Office of Highways/Engineering, LR 22:224 (March 1996), LR 31:

**§105. Location**

A. - D. ...

E. Relative Location. In the direction of travel, successive specific information signs shall be those for "ATTRACTIONS," "CAMPING," "LODGING," "FOOD," and "GAS" in that order.

F. ...

G. Number of Signs Permitted. There shall be no more than one specific information sign for each type of service along an approach to an interchange or intersection. There shall be no more than six business signs displayed on a specific information sign.

H. - I.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:785 (July 1992), LR 19:352 (March 1993), by the Department of Transportation and Development, Office of Highways/Engineering, LR 22:224 (March 1996), LR 25:1277 (July 1999), LR 31:

**§107. Criteria for Specific Information Permitted**

A. - A.1. ...

2. In rural areas, businesses shall be located no more than 10 miles in either direction for "GAS," "FOOD" and "LODGING" or 25 miles in either direction for "CAMPING" and "ATTRACTIONS" from the terminal of the nearest off ramp. In urban areas, businesses shall be located no more than two miles in either direction for "GAS," "FOOD" AND "LODGING" or five miles in either direction for "CAMPING" and "ATTRACTIONS" from the terminal of the nearest off ramp. Measurements shall be made from the beginning of the curves connecting the ramp to the crossroad or the nosepoint of a loop along the normal edge of the pavement of the crossroad as a vehicle must travel to reach a point opposite the main entrance to the business.

A.3. - B. ...

C. Specific Criteria for "GAS"

C.1. - E.4.e ...

F. Specific Criteria for "CAMPING"

F.1. - F.3. ...

4. At least 10 campsites with water and electrical outlets for all types of travel-trailers and camping vehicles. A tent camping area must also be provided with a minimum of two tent sites.

G. - G.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:785 (July 1992), LR 19:353 (March 1993), by the Department of Transportation and Development, Office of Highways/Engineering, LR 22:225 (March 1996), LR 25:1277 (July 1999), LR 31:

**§109. Sign Composition**

A. - F. ...

G. Priority. If space is limited, when an interchange is brought into the Specific Services Program, priority for signs will be given to "GAS," "FOOD," "LODGING," "CAMPING" and "ATTRACTIONS" in that order. Combined specific information signs shall be used to provide signing for all services with qualifying businesses, even if there are more than three qualifying businesses in a particular service.

H. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 11:782 (August 1985), amended LR 18:785 (July 1992), LR 19:353 (March 1993), by the Department of Transportation and Development, Office of Highways/Engineering, LR 22:226 (March 1996), LR 31:

**Family Impact Statement**

The proposed adoption of this Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

- 1. the implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family;
- 2. the implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children;
- 3. the implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family;
- 4. the implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget;
- 5. the implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children;
- 6. the implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this Notice of Intent to Sherryl J. Tucker, Senior Attorney, Department of Transportation and Development, P. O. Box 94245, Baton Rouge, LA 70804-9245, Telephone (225) 237-1359.

J. Michael Bridges, P.E.  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Outdoor Advertising**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This rule-making reflects technical rule changes required by adjustments to Federal regulations governing logo programs nationwide. There should be no cost to state or local governmental units as a result of the changes. The wording change from "Fuel@o "Gas@will be performed as signs are replaced or rehabilitated.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Revenue may decrease minimally because no sign boards will have more than six screens and nine screens were previously allowed. Those currently with nine screens will be allowed to remain in place. The rule change on camping signs to require a minimum of 2 tent sites should have no economic impact.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There should be no cost to directly affected persons or groups, i.e., the businesses which avail themselves of the Logo Program administered by the Department. Although the Department will no longer have boards with nine screens, those currently with nine screens will be allowed to remain in place. The requirement that businesses which advertise camping have at least two campsites should not affect current or potential advertisers.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There should be no effect on competition or employment.

J. Michael Bridges, P.E.  
Undersecretary  
0411#053

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Exotic Fish (LAC 76:VII.199)

The Wildlife and Fisheries Commission does hereby give notice of its intent to adopt a Rule for harvesting exotic fish with specific gears.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 1. Freshwater Sports and Commercial Fishing**

**§199. Designation and Taking of Exotic Fish**

A. For the purposes of this Section, the following species of nonindigenous fish are designated as exotic fish:

1. grass carp (*ctenopharyngodon idella*);
2. silver carp (*hypophthalmichthys molitrix*);
3. bighead carp (*hypophthalmichthys nobilis*);
4. black carp (*mylopharyngodon piceus*).

B. In order to promote the removal of the exotic species identified in this Rule, it shall be lawful to retain as bycatch all such designated exotic species of fish which may be caught in all legal commercial fishing gear, which gear is

being legally fished. While alive, such exotic fish shall not be maintained, sold, bartered, traded, or exchanged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:319.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 31:

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the Final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Interested persons may submit written comments of the Notice of Intent to Bennie Fontenot, Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Thursday, January 6, 2005.

Bill A. Busbice, Jr.  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Exotic Fish**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will have no implementation costs. Enforcement of the proposed rule will be carried out using existing staff.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no implementation costs. Enforcement of the proposed rule will be carried out using existing staff.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Commercial fishermen will benefit from the proposed rule by being able to harvest and sell four additional exotic fish species (grass carp, silver carp, bighead carp and black carp). Shad gill net and mullet strike net commercial fishermen will benefit by being able to harvest and sell exotic fish species that are captured in their nets. The proposed rule would not impose any additional costs to commercial fishermen. A reduction in the number of exotic fish species in areas where they are abundant could improve fish habitat and increase fish and mussel populations.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no effect on competition and employment in the public and private sectors.

Janice A. Lansing  
Undersecretary  
0411#048

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

#### Retail Floristry Examination

The next retail floristry examinations will be given January 17-21, 2005, 9:30 a.m. at the 4-H Mini Farm Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is December 3, 2004. No applications will be accepted after December 3, 2004.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to December 3, 2004. Questions may be directed to (225) 952-8100.

Bob Odom  
Commissioner

0411#028

## POTPOURRI

### Department of Civil Service Ethics Administration Program

The Board of Ethics' Consideration of Sworn  
Complaints and Waivers of Late Filing Fees  
(LAC 52:I.701, 801, and 1205)

A Notice of Intent concerning the above referenced proposed Rule was published on June 20, 2004 in the *Louisiana Register* (see LR 30:1310-1330). No comments on the proposed rules were received; therefore, a public hearing was not conducted. However, comments were received before the legislative oversight committee upon review of the proposed rules, specifically Sections 701, 801 and 1205. With respect to the proposed change to Section 801 and 701, it was suggested that Subsection 701.B be enacted to ensure compliance with the statutory provision that the Board of Ethics must consider sworn complaints. With the suggestion of Subsection 701.B, Section 801 is redundant and its repeal is recommended. Subsection 701.A would delete reference to "non-sworn complaints." Proposed Subsection 701.B reads as follows:

If the board receives a signed sworn complaint from any elector that does not present a potential violation of any law within its jurisdiction or the regulations or orders issued by the board, the board shall not initiate an investigation and will notify the complainant that the board declined to initiate an investigation and, accordingly, closed the file.

With respect to Section 1205, comments were received that the board's procedure was unclear as to whether late filers'

ability to make appearances in connection with their timely submitted request for a waiver was discretionary. To clarify the board's current practice and intent to allow any late filer who timely submits a request for a waiver of good cause to make an appearance, the following underscored language has been suggested to Subsection 1205.A:

Any person assessed with automatic late filing fees may appeal, in writing, to the board within 30 days after the mailing of the assessment requiring the payment of late filing fees, setting forth the facts which tend to prove that the late filer had good cause for filing late. The late filer may request an appearance. The executive secretary shall place all such appeals on the board's agenda for consideration. If a late filer requests to make an appearance, the executive secretary shall schedule the appearance.

The Board of Ethics proposes to amend the above referenced provisions to amend certain portions of the proposed rule. Accordingly, notice is hereby given of the Board of Ethics' intention to amend the proposed rule consistent with the comments received and the suggestions made. All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than Thursday, December 2, 2004, to R. Gray Sexton, Ethics Administrator, 2415 Quail Drive, Third Floor, Baton Rouge, LA 70808 at 4:45 p.m. Any questions concerning this notice may be directed to Mr. R. Gray Sexton, Ethics Administrator, at (225) 763-8777.

R. Gray Sexton  
Ethics Administrator

0411#055

## POTPOURRI

### Department of Civil Service Ethics Administration Program

The Board of Ethics' Procedure Concerning the Return of  
Funds Accepted during a Legislative Session.  
(LAC 52:I.1608, 1919, and 1921)

A Notice of Intent concerning the above referenced proposed Rule was published on September 20, 2004 in the *Louisiana Register* (see LR 30:2094-2116). No comments on the proposed rules were received; therefore, a public hearing was not conducted. However, comments were received before the legislative oversight committee upon review of the proposed rules, specifically Sections 1608, 1919, and 1921. With respect to the proposed change to Section 1608, it was suggested that the proposed rule be divided into two sections, with each section applying to legislators and the governor, respectively. Such a technical change will be made. However, it was suggested that the time afforded to legislators and to the governor to return funds accepted during a legislative session, and the 30 day period thereafter for the governor, be extended from 15 days to 30 days. With respect to Sections 1919 and 1921, suggestions were made

to propose rules concerning the aggregation of expenditures by executive branch lobbyists pursuant to R.S. 49:71, et seq.; after which, changes may need to be made to the proposed forms in Sections 1919 and 1921. Therefore, the proposed forms in Sections 1919 and 1921 will not be adopted.

The Board of Ethics proposes to amend the above referenced provisions to amend certain portions of the proposed rule. Accordingly, notice is hereby given of the Board of Ethics' intention to amend the proposed rule consistent with the comments received and the suggestions made. All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than Thursday, December 2, 2004, to R. Gray Sexton, Ethics Administrator, 2415 Quail Drive, Third Floor, Baton Rouge, LA 70808 at 4:45 p.m. Any questions concerning this notice may be directed to Mr. R. Gray Sexton, Ethics Administrator, at (225) 763-8777.

R. Gray Sexton  
Ethics Administrator

0411#056

## POTPOURRI

### Department of Environmental Quality Office of Environmental Assessment

#### Advance Notice of Proposed Rulemaking Solicitation of Comments on New Source Review Rules for Prevention of Significant Deterioration Program (AQ246F and AQ246L)(LAC 33:III.509)

On December 31, 2002, the United States Environmental Protection Agency published a final New Source Review (NSR) rule revising the regulations that implement the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) provisions of the Clean Air Act. To be approvable under the State Implementation Plan (SIP), states implementing Part C (PSD permit program in §51.166) or Part D (nonattainment NSR permit program in §51.165) must include EPA's December 31, 2002, changes as minimum program elements. States must adopt and submit revisions to their Part 51 permitting programs implementing these minimum program elements no later than January 2, 2006 (67 FR 80240).

The LDEQ is developing a revision to the regulations that proposes to adopt the federal rule (AQ246F) and includes revisions put forward by the department (AQ246L). According to the Administrative Procedure Act [R.S. 49:953(F)(1)], the department is required to propose a rule that differs from a federal rule separately from a proposed rule that is identical to a federal rule. The department requests comments on these two draft rules prior to beginning formal rulemaking. Separate correspondence should be submitted for comments on AQ246F and AQ246L, or each comment should clearly reference AQ246F or AQ246L, as appropriate.

EPA's NSR revisions (hereinafter Federal NSR Reform rule) include five major elements:

**Baseline Emissions** Changes the method for determining the source's emissions before a change is made (the baseline against which emissions increases are measured);

**Applicability Test** Changes the method for estimating the emissions after the change;

**Clean Unit Exclusion** Disregards increases from emissions units that have installed controls within the last 10 years;

**Pollution Control Project Exclusion** Exempts certain projects that will cause a significant increase in emissions of one pollutant, but reduce emissions of another pollutant; and

**Plantwide Applicability Limits** Allows facilities to establish a cap on emissions and trade increases and decreases under the cap, without installing controls on new or modified emissions units.

Louisiana's draft rule (AQ246L) differs from the Federal NSR Reform rule as follows.

The Federal NSR Reform rule allows all existing emissions units to use the "actual-to-projected-actual" test, predicting what the unit's actual emissions will be for five years after the project, and subtracting emissions increases that the source predicts will be due to production increases that the facility could have accommodated without the change (i.e., demand growth exclusion). Louisiana's draft rule deletes the demand growth exclusion.

The Federal NSR Reform rule provides automatic designation as a "Clean Unit" for any emissions unit that has installed Best Available Control Technology (BACT) or has met the Lowest Achievable Emission Rate (LAER) within the last 10 years, and allows sources to demonstrate that other controls are comparable to BACT or LAER to receive Clean Unit status. Louisiana's draft rule reduces the 10-year timeframe to 5 years and does not allow sources to demonstrate that other controls are comparable to BACT or LAER to receive Clean Unit status. In order to obtain Clean Unit status, an NSR permit must be issued to the source.

For proposed projects as well as projects remaining within the contemporaneous period, when the project involves multiple emissions units or multiple pollutants, only one baseline period may be used to determine the baseline actual emissions with respect to all pollutants and all affected emissions units. The Federal NSR Reform rule allows different 24-month periods to be selected for each pollutant.

In Louisiana's draft rule, the exclusions for temporary and permanent clean coal technology demonstration projects and for the reactivation of a very clean coal-fired electric utility steam generating units have been omitted from the definition of "major modification" because they are outdated. Louisiana's draft rule eliminates "malfunctions" from the definition of "projected actual emissions." The Federal NSR Reform rule allows owners and operators to project malfunction emissions.

Louisiana's draft rule adds consequences for underestimation of projected actual emissions. For projects originally determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines that project has resulted or will now result in a significant net emissions increase, the owner or operator must either request that the administrative authority limit the potential to emit of the affected emissions unit(s) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result, or submit a revised PSD application within 90 days.

Louisiana's draft rule expands on routine maintenance, repair and replacement (RMRR). In determining whether an activity at a facility constitutes RMRR, the owner or operator must consider the nature, extent, purpose, frequency, and cost of the work to be performed. RMRR activities are narrow in scope, do not result in increased capacity, occur with regular frequency, and involve limited expense.

Louisiana's draft rule also reflects non-substantive wording and/or structural changes to improve readability (e.g., alphabetized definitions).

The LDEQ requests all interested parties submit comments on the draft rules prior to rulemaking. In addition, the LDEQ specifically requests response to the following questions.

What are the expected environmental benefits and/or disbenefits of the rules under consideration?

What is the potential compliance costs for the rules under consideration?

Any other information the responder desires to be in the record.

Comments are due no later than 4:30 p.m., January 20, 2005, and should be submitted to Keith Jordan, Box 4313, Baton Rouge, LA 70821-4313 or to fax (225) 219-3309 or by e-mail to keith.jordan@la.gov. Persons commenting should reference these document as AQ246F and AQ246L. The draft regulations are available on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>. Copies of the draft regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ246F and AQ246L.

The draft regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

## AQ246F

### **Title 33 ENVIRONMENTAL QUALITY Part III. Air**

#### **Chapter 5. Permit Procedures**

#### **§509. Prevention of Significant Deterioration**

##### **A. Applicability Procedures**

1. The requirements of Subsections J-R of this Section shall apply to the construction of major stationary sources and major modifications with respect to each pollutant subject to regulations under this Section that they would emit, except as this Section otherwise provides. No provision of this part applies to Indian reservations, meaning any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

2. The requirements of Subsections J-R of this Section apply only to any major stationary source or major modification that would be constructed in an area designated

as attainment or unclassifiable as specified in Subsection B. *Baseline Area* of this Section.

3. The requirements of the program will be applied in accordance with the principles set out in this Paragraph as follows.

a. Except as otherwise provided in Paragraphs A.4 and 5 of this Section, a project is a major modification for a pollutant subject to regulation under this Section if it causes a significant net emissions increase. The project is not a major modification if it does not cause a significant net emissions increase.

b. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

4. For any major stationary source with a plantwide applicability limit (PAL) for a pollutant subject to regulation under this Section, the major stationary source shall comply with the requirements under Subsection AA of this Section.

5. An owner or operator undertaking a pollution control project (PCP) shall comply with the requirements under Subsection Z of this Section.

B. Definitions. For the purpose of this Part the terms below shall have the meaning specified herein as follows.

\*\*\*

**Allowable Emissions** The emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. the applicable standards as set forth in 40 CFR Parts 60 and 61;

2. ...

3. the emissions rate specified under any requirement or permit condition that is federally enforceable.

**Baseline Actual Emissions** The rate of emissions, in tons per year, of a pollutant subject to regulation under this Section, as determined below.

1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator projects to begin actual construction of the project. The administrative authority may allow the use of a different time period upon a determination that it is more representative of normal source operation.

a. The average rate shall include fugitive emissions to the extent quantifiable, and any authorized emissions associated with startup, shutdown, and malfunction; the average rate shall not include excess emissions or emissions associated with upsets or malfunctions.

b. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

c. When a project involves multiple emissions units or multiple pollutants subject to regulation under this Section, or both, only one consecutive 24-month period must be used to determine the baseline actual emissions for all

pollutants and for all the emissions units affected by the project.

d. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs 1.b and c of this definition.

2. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding when the owner or operator projects to begin actual construction of the project.

a. The average rate shall include fugitive emissions to the extent quantifiable, and any authorized emissions associated with startup, shutdown, and malfunction; the average rate shall not include excess emissions or emissions associated with upsets or malfunctions.

b. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

c. When a project involves multiple emissions units or multiple pollutants subject to regulation under this Section, or both, only one consecutive 24-month period must be used to determine the baseline actual emissions for all pollutants and for all the emissions units affected by the project.

d. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs 2.b and c of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph 1 of this definition, for other existing emissions units in accordance with the procedures contained in Paragraph 2 of this definition, and for a new emissions unit in accordance with the procedures contained in Paragraph 3 of this definition.

**Baseline Area**

1. any area designated as attainment or unclassifiable in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 µg/m<sup>3</sup> (annual average) of the pollutant for which the minor source baseline date is established;

2. - 2.e. ...

3. area redesignations under Section 107(d)(1)(D) or (E) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

a. establishes a minor source baseline date; or

b. is subject to 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation;

4. any baseline area established originally for the total suspended particulate (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that such a baseline area shall not remain in effect if the administrative authority rescinds the corresponding minor source baseline date in accordance with Subsection B. *Baseline Date*.4 of this Section.

\*\*\*

**Baseline Date**

1. - 1.b. ...

2. *Minor Source Baseline Date*—the earliest date after the trigger date on which a major stationary source or a major modification subject to this Section submits a complete application under the relevant regulations. The trigger date is:

a. - b. ...

3. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

a. the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(i)(D) or (E) of the Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21; and

b. in the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

4. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the administrative authority shall rescind a minor source baseline date where it can be shown, to the satisfaction of the administrative authority, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

\*\*\*

**Best Available Control Technology (BACT)**

1. ...

2. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by an applicable standard under 40 CFR Parts 60 and 61. If the administrative authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means that achieve equivalent results.

**Best Available Retrofit Technology (BART)**

**Building, Structure, Facility, or Installation** Call of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

**Clean Unit** Any emissions unit that qualifies as a Clean Unit in accordance with Subsection X of this Section.

\*\*\*

**Continuous Emissions Monitoring System (CEMS)** Call of the equipment that may be required to meet the data acquisition and availability requirements of this Section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**Continuous Emissions Rate Monitoring System (CERMS)** The total equipment required for the determination and recording of the pollutant mass emissions rate, in terms of mass per unit of time.

**Continuous Parameter Monitoring System (CPMS)** Call of the equipment necessary to meet the data acquisition and availability requirements of this Section, to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O<sub>2</sub>, or CO<sub>2</sub> concentrations), and to record average operational parameter values on a continuous basis.

**Electric Utility Steam Generating Unit** Any steam-electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

**Emissions Unit** Any part of a stationary source that emits or would have the potential to emit any pollutant subject to regulation under this Section. For purposes of this Section, there are two types of emissions units.

1. A *new emissions unit* is any emissions unit that is, or will be, newly constructed and that has existed for less than two years from the date such emissions unit first operated.

2. An *existing emissions unit* is any emissions unit that is not a new emissions unit.

\*\*\*

**Federally Enforceable** Call limitations and conditions that are enforceable by the administrative authority, including those requirements developed in accordance with 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the state implementation

plan and expressly requires adherence to any permit issued under such program.

\*\*\*

**Lowest Achievable Emission Rate (LAER)** As defined in LAC 33:III.504.

**Major Modification**

1. - 3.f. ...

g. any change in source ownership; and

h. the addition, replacement, or use of a PCP at an existing emissions unit meeting the requirements of Subsection Z of this Section.

4. This definition shall not apply with respect to a particular pollutant subject to regulation under this Section when the major stationary source is complying with the requirements under Subsection AA of this Section for a PAL for that pollutant.

**Major Stationary Source**

1. - 4. ...

5. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a major stationary source, unless the source is listed in Table A of this Subsection or, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

\*\*\*

**Pollution Control Project (PCP)** At an existing emissions unit, any activity, set of work practices, or project (including pollution prevention), the primary purpose of which is to reduce emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. The following projects carry the rebuttable presumption that they are environmentally beneficial in accordance with Subparagraph Z.2.a of this Section. Projects not listed in these paragraphs may qualify for a case-specific PCP exclusion in accordance with the requirements of Paragraphs Z.2 and 5 of this Section:

1. conventional or advanced flue gas desulfurization or sorbent injection for control of SO<sub>2</sub>;

2. electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants;

3. flue gas recirculation, low-NO<sub>x</sub> burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO<sub>x</sub>;

4. regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this Section, *hydrocarbon combustion flare* means either a flare used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under such a standard, or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide;

5. activities or projects undertaken to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following fuel switches:

a. switching from a higher sulfur fuel oil to 0.05 percent or lower sulfur fuel oil;

b. switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;

c. switching from coal to wood, excluding construction or demolition waste, chemical- or pesticide-treated wood, and other forms of "unclean" wood;

d. switching from coal to #2 fuel oil (0.5 percent maximum sulfur content); and

e. switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content);

6. activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

a. the productive capacity of the equipment is not increased as a result of the activity or project;

b. the projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, the following procedures apply:

i. determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B;

ii. calculate the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any 24 consecutive months of usage within the past 10 years, by the ODP of the replaced ODS;

iii. calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP;

iv. if the value calculated in Clause 6.b.ii of this definition is more than the value calculated in Clause 6.b.iii of this definition, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

**Pollution Prevention** Any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal. It does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

**Potential to Emit** The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the *potential to emit* of a stationary source.

**Predictive Emissions Monitoring System (PEMS)** All of the equipment necessary to monitor process and control

device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O<sub>2</sub>, or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

**Project** The set of physical changes at, or changes in the method of operation of, an existing major stationary source.

**Projected Actual Emissions**

1. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a pollutant subject to regulation under this Section in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date if the project involves increasing the emissions unit's design capacity or its potential to emit of that pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

2. In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

a. shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved state implementation plan; and

b. shall include fugitive emissions to the extent quantifiable, and any authorized emissions associated with startup and shutdown. Projected actual emissions shall not include excess emissions or emissions associated with upsets or malfunctions;

c. in lieu of using the method set out in Subparagraphs 2.a and b of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined in this Section.

\*\*\*

**Reasonably Available Control Technology (RACT)** As defined in 40 CFR 51.100(o).

\*\*\*

**Secondary Emissions** Emissions that occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. *Secondary emissions* include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. *Secondary emissions* do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

**Significant**

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates.



Carbon monoxide	100	tons per year (tpy)
Nitrogen oxides	40	tpy
Sulfur dioxide	40	tpy
Particulate matter	25	tpy of particulate emissions
	15	tpy of PM <sub>10</sub> emissions
Ozone	40	tpy of volatile organic compounds
Lead	0.6	tpy
Fluorides	3	tpy
Sulfuric acid mist	7	tpy
Hydrogen sulfide (H <sub>2</sub> S)	10	tpy
Total reduced sulfur (including H <sub>2</sub> S)	10	tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10	tpy
Municipal waste combustor organics <sup>1</sup>	0.0000035	tpy
Municipal waste combustor metals <sup>2</sup>	15	tpy
Municipal waste combustor acid gases <sup>3</sup>	40	tpy
Municipal solid waste landfills emissions <sup>4</sup>	50	tpy

<sup>1</sup>measured as total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans

<sup>2</sup>measured as particulate matter

<sup>3</sup>measured as sulfur dioxide and hydrogen chloride

<sup>4</sup>measured as nonmethane organic compounds

2. Notwithstanding Paragraph 1 of this definition, *significant* means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1µg/m<sup>3</sup> (24-hour average).

\* \* \*

*Volatile Organic Compounds (VOC)* as defined in 40 CFR 51.100(s).

Table A. ...

C. Ambient Air Increments. In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following.

Pollutant	Maximum Allowable Increase (micrograms per cubic meter) <sup>1</sup>
<b>Class I</b>	
Particulate matter: PM <sub>10</sub> , Annual arithmetic mean	4
PM <sub>10</sub> , 24-hr maximum	8
Sulfur dioxide: Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide: Annual arithmetic mean	2.5
<b>Class II</b>	
Particulate matter: PM <sub>10</sub> , Annual arithmetic mean	17
PM <sub>10</sub> , 24-hr maximum	30
Sulfur dioxide: Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide: Annual arithmetic mean	25
<b>Class III</b>	

Pollutant	Maximum Allowable Increase (micrograms per cubic meter) <sup>1</sup>
Particulate matter: PM <sub>10</sub> , Annual arithmetic mean	34
PM <sub>10</sub> , 24-hr maximum	60
Sulfur dioxide: Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide: Annual arithmetic mean	50

<sup>1</sup>For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

D. Ambient Air Ceilings. No concentration of a pollutant shall exceed:

1. the concentration permitted under the national secondary ambient air quality standard; or
2. the concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

E. Restrictions on Area Classifications

1. All of the following areas that were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

- a. international parks;
- b. national wilderness areas that exceed 5,000 acres in size;
- c. national memorial parks that exceed 5,000 acres in size; and
- d. national parks that exceed 6,000 acres in size.

2. Areas that were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Section.

3. Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this Section.

4. The following areas may be redesignated only as Class I or II:

a. an area that as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, or a national lakeshore or seashore; and

b. a national park or national wilderness area established after August 7, 1977, that exceeds 10,000 acres in size.

F. Reserved.

G. Redesignation

1. All areas, except as otherwise provided under Subsection E of this Section, are designated Class II as of December 5, 1974. Redesignation, except as otherwise precluded by Subsection E of this Section, may be proposed by the respective states or Indian governing bodies, as provided below, subject to approval by the administrative authority as a revision to the applicable state implementation plan.

2. The state may submit to the administrative authority a proposal to redesignate areas of the state Class I or Class II provided that:

- a. at least one public hearing has been held in accordance with procedures established in 40 CFR 51.102;

b. other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

c. a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

d. prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the state has provided written notice to the appropriate federal land manager and afforded adequate opportunity, not in excess of 60 days, to confer with the state respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any federal land manager had submitted written comments and recommendations, the state shall have published a list of any inconsistency between such redesignation and such comments and recommendations, together with the reasons for making such redesignation against the recommendation of the federal land manager; and

e. the state has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

3. Any area other than an area to which Subsection E of this Section refers may be redesignated as Class III if:

a. the redesignation would meet the requirements of this Paragraph;

b. the redesignation, except any established by an Indian governing body, has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session, unless state law provides that the redesignation must be specifically approved by state legislation, and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation;

c. the redesignation would not cause, or contribute to, a concentration of any air pollutant that would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

d. any permit application for any major stationary source or major modification, subject to review under Subsection L of this Section, which could receive a permit under this Section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

4. Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body. The appropriate Indian governing body may submit to the administrative authority a proposal

to redesignate areas Class I, Class II, or Class III, provided that:

a. the Indian governing body has followed procedures equivalent to those required of a state under Paragraph G.2 and Subparagraphs G.3.c and d of this Section; and

b. such redesignation is proposed after consultation with the state(s) in which the Indian reservation is located and which border the Indian reservation.

5. The administrative authority shall disapprove, within 90 days of submission, a proposed redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this Subsection or is inconsistent with Subsection E of this Section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation that was disapproved.

6. If the administrative authority disapproves any proposed redesignation, the state or Indian governing body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the administrative authority.

#### H. Stack Heights

1. ...

a. so much of the stack height of any source as exceeds good engineering practice; or

1.b. - 2. ...

#### I. Exemptions

1. The requirements of Subsections J-R of this Section shall not apply to a particular major stationary source or major modification if:

a. construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

b. the source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:

i. obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

ii. commenced construction before March 19, 1979; and

iii. did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

c. the source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such a case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

d. the source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

i. obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable state implementation plan before March 1, 1978;

ii. commenced construction before March 19, 1979; and

iii. did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

e. the source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

i. obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable state implementation plan before August 7, 1980;

ii. commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable state implementation plan; and

iii. did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

f. the source or modification would be a nonprofit health or nonprofit educational institution or a major modification that would occur at such an institution, and the governor of the state in which the source or modification would be located requests that it be exempt from those requirements; or

g. the source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- i. coal cleaning plants (with thermal dryers);
- ii. kraft pulp mills;
- iii. Portland cement plants;
- iv. primary zinc smelters;
- v. iron and steel mills;
- vi. primary aluminum ore reduction plants;
- vii. primary copper smelters;
- viii. municipal incinerators capable of charging more than 250 tons of refuse per day;
- ix. hydrofluoric, sulfuric, or nitric acid plants;
- x. petroleum refineries;
- xi. lime plants;
- xii. phosphate rock processing plants;
- xiii. coke oven batteries;
- xiv. sulfur recovery plants;
- xv. carbon black plants (furnace process);
- xvi. primary lead smelters;
- xvii. fuel conversion plants;
- xviii. sintering plants;
- xix. secondary metal production plants;
- xx. chemical process plants;
- xxi. fossil fuel fired boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- xxii. petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- xxiii. taconite ore processing plants;
- xxiv. glass fiber processing plants;
- xxv. charcoal production plants;
- xxvi. fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- xxvii. any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act; or

h. the source is a portable stationary source which has previously received a permit under this Section, if:

i. the owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

ii. the emissions from the source would not exceed its allowable emissions; and

iii. the emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

iv. reasonable notice is given to the administrative authority prior to the relocation identifying the proposed new location and probable duration of operation at that location. Such notice shall be given to the administrative authority not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the administrative authority; or

i. the source or modification was not subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:

i. obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable state implementation plan before July 31, 1987;

ii. commenced construction within 18 months after July 31, 1987, or any earlier time required under the state implementation plan; and

iii. did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time; or

j. the source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator submitted an application for a permit under this Section before that date, and the administrative authority subsequently determines that the application as submitted was complete with respect to the particulate matter requirements then in effect in this Section. Instead, the requirements of Subsections J-R of this Section that were in effect before July 31, 1987, shall apply to such source or modification.

2. The requirements of Subsections J-R of this Section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the Clean Air Act.

3. The requirements of Subsections K, M, and O of this Section shall not apply to a proposed major stationary source or major modification that would impact no Class I area and no area where an applicable increment is known to be violated, and would be temporary.

4. The requirements of Subsections K, M, and O of this Section as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated new source review (NSR) pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

5. The administrative authority may exempt a stationary source or modification from the requirements of Subsection M of this Section with respect to monitoring for a particular pollutant if:

a. the emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts.

Carbon monoxide	575 µg/m <sup>3</sup>	8-hour average;
Nitrogen dioxide	14 µg/m <sup>3</sup>	annual average;
Particulate matter	10 µg/m <sup>3</sup> PM <sub>10</sub>	24-hour average;
Sulfur dioxide	13µg/m <sup>3</sup>	24-hour average;
Ozone	No <i>de minimis</i> air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data;	
Lead	0.1 µg/m <sup>3</sup>	3-month average;
Fluorides	0.25 µg/m <sup>3</sup>	24-hour average;
Total reduced sulfur	10 µg/m <sup>3</sup>	1-hour average;
Hydrogen sulfide	0.2 µg/m <sup>3</sup>	1-hour average;
Reduced sulfur compounds	10 µg/m <sup>3</sup>	1-hour average; or

b. the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Subparagraph I.5.a of this Section, or the pollutant is not listed in Subparagraph I.5.a of this Section.

6. The requirements for best available control technology in Subsection J of this Section and the requirements for air quality analyses in Paragraph M.1 of this Section shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the administrative authority subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978, apply to any such source or modification.

#### 7. Air Quality Monitoring Requirements

a. The requirements for air quality monitoring in Subparagraphs M.1.b-d of this Section shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under this Section on or before June 8, 1981, and the administrative authority subsequently determines that the application as submitted before that date was complete with respect to the requirements of this Section other than those in Subparagraphs M.1.b-d of this Section, and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

b. The requirements for air quality monitoring in Subparagraphs M.1.b-d of this Section shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under this Section on or before June 8, 1981, and the administrative authority subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in Subparagraphs M.1.b-d of this Section.

#### 8. Air Quality Monitoring Requirement Exemption

a. At the discretion of the administrative authority, the requirements for air quality monitoring of PM<sub>10</sub> in Subparagraphs M.1.a-d of this Section may not apply to a particular source or modification when the owner or operator of the source or modification has submitted an application for a permit under this Section on or before June 1, 1988, and the administrative authority subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in Subparagraphs M.1.a-d of this Section.

b. The requirements for air quality monitoring of PM<sub>10</sub> in Subparagraphs M.1.a-d of this Section shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under this Section after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes otherwise complete in accordance with the provisions set forth under Subparagraph M.1.h of this Section, except that if the administrative authority determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that Subparagraph M.1.c of this Section requires shall have been gathered over a shorter period.

9. The requirements of Paragraph K.2 of this Section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this Section before the provisions embodying the maximum allowable increase took effect as part of the applicable state implementation plan and the administrative authority subsequently determined that the application as submitted before that date was complete.

10. The requirements in Paragraph K.2 of this Section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM<sub>10</sub> if:

a. the owner or operator of the source or modification submitted an application for a permit under this Section before the provisions embodying the maximum allowable increases for PM<sub>10</sub> took effect in an implementation plan to which this Section applies; and

b. the administrative authority subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in Paragraph K.2 of this Section shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

#### J. Control Technology Evaluation

1. A major stationary source or major modification shall meet each applicable emissions limitation under the Louisiana state implementation plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

2. A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

3. A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

J.4. - K. ...

1. any national ambient air quality standard in any air quality control region; or

2. any applicable maximum allowable increase over the baseline concentration in any area.

L. - M.1.a.ii. ...

b. With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the administrative authority determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

c. - d. ...

e. For any application that became complete, except as to the requirements of Subparagraphs M.1.c and d of this Section, between June 8, 1981 and February 9, 1982, the data that Subparagraph M.1.c of this Section requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:

i. if the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations;

ii. if the administrative authority determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that Subparagraph M.1.c of this Section requires shall have been gathered over at least that shorter period;

iii. if the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the administrative authority may waive the otherwise applicable requirements of Subsection E of this Section to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

f. The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this Paragraph.

g. For any application that became complete, except as to the requirements of Subparagraphs M.1.c and d of this Section pertaining to PM<sub>10</sub>, after December 1, 1988, and no later than August 1, 1989, the data that Subparagraph M.1.c of this Section requires shall have been gathered over at least the period from August 1, 1988, to the date the application became otherwise complete, except that if the administrative authority determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that Subparagraph M.1.c of this Section requires shall have been gathered over that shorter period.

h. With respect to any requirements for air quality monitoring of PM<sub>10</sub> under Subparagraphs I.10.a and b of this Section, the owner or operator of the source or modification shall use a monitoring method approved by the administrative authority and shall estimate the ambient concentrations of PM<sub>10</sub> using the data collected by such approved monitoring method in accordance with estimating procedures approved by the administrative authority.

2. ...

3. Operation of Monitoring Station. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B during the operation of monitoring stations for purposes of satisfying this Subsection.

N. ...

1. With respect to a source or modification to which Subsection J, L, or P of this Section applies, or to a source subject to a PAL to which Subsections L and P of this Section apply, such information shall include:

N.1.a. - O.2. ...

3. Visibility Monitoring. The administrative authority may require monitoring of visibility in any federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the administrative authority deems necessary and appropriate.

P. - P.1. ...

2. Federal Land Manager. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values, including visibility, of such lands and to consider, in consultation with the administrative authority, whether a proposed source or modification will have an adverse impact on such values.

3. Denial of Impact on Air Quality Related Values. The federal land manager of any such lands may demonstrate to the administrative authority that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values, including visibility, of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the administrative authority concurs with such demonstration, then the permit shall not be issued.

4. Visibility Analysis. The administrative authority shall consider any analysis performed by the federal land manager provided within 30 days of the notification and analysis required under Paragraph P.1 of this Section that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal Class I area. Where the administrative authority finds that such an analysis does not demonstrate to the satisfaction of the administrative authority that an adverse impact on visibility will result in the federal Class I area, the administrative authority must, in the notice of public hearing on the permit application, either explain such decision or give notice as to where the explanation can be obtained.

5. Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands, including visibility,

notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the administrative authority may, provided the applicable requirements of this Section are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter and nitrogen dioxide would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants.

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Particulate Matter:	
PM <sub>10</sub> Annual arithmetic mean	17
PM <sub>10</sub> 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

6. Sulfur Dioxide Variance by Governor with Federal Land Manager's Concurrence. The owner or operator of a proposed source or modification that cannot be approved under Paragraph P.4 of this Section may demonstrate to the governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this Paragraph would not adversely affect the air quality related values of the area, including visibility. The governor, after consideration of the federal land manager's recommendation, if any, and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such a variance is granted, the administrative authority shall issue a permit to such source or modification in accordance with the requirements of Paragraph P.7 of this Section, provided that the applicable requirements of this Section are otherwise met.

7. Variance by the Governor with the President's Concurrence. In any case where the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President. The President may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the administrative authority shall issue a permit in accordance with the requirements of this Paragraph, provided that the applicable requirements of this Section are otherwise met.

8. Emission Limitations for Presidential or Gubernatorial Variance. In the case of a permit issued in accordance with Paragraph P.5 or 6 of this Section, the source or modification shall comply with such emission limitations as may be necessary to ensure that emissions of sulfur dioxide from the source or modification would not, during any day on which the otherwise applicable maximum allowable increases are exceeded, cause or contribute to concentrations that would exceed the following maximum

allowable increases over the baseline concentration and to ensure that such emissions would not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period.

Maximum Allowable Increase (Micrograms per cubic meter)		
Period of Exposure	Terrain Areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

Q. - Q.8.b. ...

R. Source Obligation

1. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted in accordance with this Section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Section who commences construction after the effective date of these regulations without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action.

2. - 3. ...

4. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Subsections J-S of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

5. Reserved.

6. The provisions of this Paragraph apply to projects at an existing emissions unit at a major stationary source, other than projects at a Clean Unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in the definition found in this Section for calculating projected actual emissions.

a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

- i. a description of the project;
- ii. identification of the emissions units whose emissions of a regulated NSR pollutant could be affected by the project; and
- iii. the applicability analysis used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the potential emissions after the project, and the netting analysis.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Subparagraph R.6.a of this Section to the administrative authority. Nothing in this Paragraph shall be construed to require the owner or operator of such a unit

to obtain any determination from the administrative authority before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Clause R.6.a.ii of this Section and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority within 60 days after the end of each year during which records must be generated under Subparagraph R.6.c of this Section setting out the unit's annual emissions during the calendar year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority if the annual emissions, in tons per year, from the project identified in Subparagraph R.6.a of this Section, exceed the baseline actual emissions, as documented and maintained in accordance with Clause R.6.a.iii of this Section, by a significant amount, as defined in Subsection B. *Significant* of this Section, for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained in accordance with Clause R.6.a.iii of this Section. Such report shall be submitted to the administrative authority within 60 days after the end of such year. The report shall contain the following:

- i. the name, address, and telephone number of the major stationary source;
- ii. the annual emissions as calculated in accordance with Subparagraph R.6.c of this Section; and
- iii. any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

7. The owner or operator of the source shall make the information required to be documented and maintained in accordance with Paragraph R.6 of this Section available for review upon a request for inspection by the administrative authority or the general public in accordance with the requirements contained in 40 CFR 70.4(b)(3)(viii).

S. Environmental Impact Statements. Whenever any proposed source or modification is subject to action by a federal agency that might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the administrative authority conducted in accordance with this Subsection shall be coordinated with the broad environmental reviews under that Act and under Section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

T. Reserved.

U. Reserved.

V. Innovative Control Technology

1. The owner or operator of a proposed major stationary source or major modification may request the administrative authority in writing, no later than the close of the comment period under 40 CFR 124.10, to approve and permit a system of innovative control technology.

2. The administrative authority shall determine that the source or modification may employ a system of innovative control technology, if:

a. the proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

b. the owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Paragraph J.2 of this Section by a date specified by the administrative authority. Such date shall not be later than four years from the time of start-up or seven years from permit issuance;

c. the source or modification would meet the requirements equivalent to those in Subsections J and K of this Section based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the administrative authority;

d. the source or modification would not before the date specified by the administrative authority:

i. cause or contribute to a violation of an applicable ambient air quality standard; or

ii. impact any area where an applicable increment is known to be violated;

e. all other applicable requirements including those for public participation have been met;

f. the provisions of Subsection P of this Section, relating to Class I areas, have been satisfied with respect to all periods during the life of the source or modification.

3. The administrative authority shall withdraw any approval to employ a system of innovative control technology made under this Section, if:

a. the proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

b. the proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

c. the administrative authority decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

4. If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with Paragraph V.3 of this Section, the administrative authority may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

W. Permit Rescission

1. Any permit issued under this Section or a prior version of this Section shall remain in effect, unless and until it expires under Subsection R of this Section or is rescinded.

2. Any owner or operator of a stationary source or modification who holds a permit for the source or modification that was issued under 40 CFR 52.21 as in effect on July 30, 1987, or any earlier version of this Section, may

request that the administrative authority rescind the permit or a particular portion of the permit.

3. The administrative authority shall grant an application for rescission if the application shows that this Section would not apply to the source or modification.

4. If the administrative authority rescinds a permit under this Subsection, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within 60 days of the rescission shall be considered adequate notice.

X. Clean Unit Test for Emissions Units That Are Subject to BACT or LAER

1. Applicability. The provisions of this Subsection apply to any emissions unit for which the administrative authority has issued a major NSR permit within the last 10 years.

2. General Provisions for Clean Units. The following provisions apply to a Clean Unit.

a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance with Paragraph X.4 of this Section, and before the expiration date, as determined in accordance with Paragraph X.5 of this Section, will be considered to have occurred while the emissions unit was a Clean Unit.

b. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or LAER or the project would alter any physical or operational characteristics that formed the basis for the BACT or LAER determination as specified in Subparagraph X.6.d of this Section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit re-qualifies as a Clean Unit in accordance with Subparagraph X.3.c of this Section. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

3. Qualifying or Re-qualifying to Use the Clean Unit Applicability Test. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in this Paragraph. After the original Clean Unit expires in accordance with Paragraph X.5 of this Section or is lost in accordance with Subparagraph X.2.b of this Section, such emissions unit may re-qualify as a Clean Unit under Subparagraph X.3.c of this Section. The Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

a. Permitting Requirement. The emissions unit must have received a major NSR permit within the last 10 years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

b. Qualifying Air Pollution Control Technologies. Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention as defined under LAC 33:III.509.B. *Pollution Prevention* or work practices, that meets the following requirements:

i. the control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a permit as specified in Subparagraph X.3.a of this Section. However, the emissions unit is not eligible for the Clean Unit designation if the BACT or LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type;

ii. the owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

c. Re-qualifying for the Clean Unit Designation. The emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT or LAER, and the emissions unit must meet the requirements in Subparagraphs X.3.a and b of this Section.

4. Effective Date of the Clean Unit Designation. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project at the emissions unit is a major modification) is determined according to the applicable Paragraph X.1 or 2 of this Section.

5. Clean Unit Expiration. An emissions unit's Clean Unit designation expires (i.e., the date on which the owner or operator may no longer use the Clean Unit Test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to the applicable Paragraph X.1 or 2 of this Section.

6. Required Title V Permit Content for a Clean Unit. After the effective date of the Clean Unit designation, and in accordance with the provisions of the applicable Title V permit program under 40 CFR Part 70, but no later than when the Title V permit is renewed, the Title V permit for the major stationary source must include the following terms and conditions related to the Clean Unit:

a. a statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies;

b. the effective date of the Clean Unit designation;

c. the expiration date of the Clean Unit designation;

d. all emission limitations and work practice requirements adopted in conjunction with BACT or LAER, and any physical or operational characteristics that formed the basis for the BACT or LAER determination (e.g., possibly the emissions unit's capacity or throughput);

e. monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation.

7. Maintaining the Clean Unit Designation. To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in Subparagraphs X.7.a-c of this Section. This Paragraph applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.



a. The Clean Unit must comply with the emission limitations and/or work practice requirements adopted in conjunction with BACT or LAER that are recorded in the major NSR permit and subsequently reflected in the Title V permit.

b. The Clean Unit must comply with any terms and conditions in the Title V permit related to the unit's Clean Unit designation.

c. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

8. Reserved.

9. Effect of Redesignation on the Clean Unit Designation. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, the unit's Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it must re-qualify under the requirements that are currently applicable in the area.

Y. Reserved.

Z. Pollution Control Projects (PCPs). PCPs may be approved according to the following provisions.

1. Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the administrative authority, or the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the administrative authority consistent with the requirements in Paragraph Z.5 of this Section. Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in Paragraph Z.2 of this Section, and the notice or permit application must contain the information required in Paragraph Z.3 of this Section.

2. Any project that relies on the PCP exclusion must meet the following requirements.

a. Environmentally Beneficial Analysis. The environmental benefit from the emissions reductions of pollutants regulated under the Clean Air Act must outweigh the environmental detriment of emissions increases in pollutants regulated under the Clean Air Act.

b. Air Quality Analysis. The maximum allowable emissions from the project will not cause or contribute to a violation of any national or Louisiana ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager.

3. Content of Permit Application. In the permit application, the owner or operator must include, at a minimum, the following information:

a. a description of the project;

b. the potential emissions increases and decreases of any pollutant regulated under the Clean Air Act and the projected actual emissions increases and decreases using the definitions of *net emissions increase* and *significant net*

emissions increase in Subsection B of this Section that will result from the project;

c. a description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in LAC 33:III.507.H.1;

d. a certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by Subparagraphs Z.2.a and b of this Section, with information submitted in the permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants;

e. a demonstration that the PCP will not have an adverse air quality impact. An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

4. Reserved.

5. Permit Process. Before an owner or operator may begin actual construction of a PCP that is not listed in Subsection B. *Pollution Control Project* of this Section, the project must be approved by the administrative authority through the inclusion of a permit. The administrative authority will provide the public with notice of the proposed approval and with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public to submit comments. The administrative authority must address all material received by the end of the comment period before taking final action on the permit.

6. Operational Requirements. Upon installation of the PCP, the owner or operator must comply with the following requirements.

a. General Duty. The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by Subparagraphs Z.2.a and b of this Section, with information submitted in the permit application required by Paragraph Z.3 of this Section, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

b. Recordkeeping. The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to demonstrate that the PCP operated consistent with the general duty requirements in Subparagraph Z.6.a of this Section.

c. Permit Requirements. The owner or operator must comply with any provisions in the permit related to use and approval of the PCP exclusion.

d. Generation of Emission Reduction Credits. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (e.g., taking an operational restriction on

the hours of operation). The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

AA. Actuals PALs. The following provisions govern actuals PALs.

1. Applicability

a. The administrative authority may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of this Subsection. The term "PAL" shall mean "actuals PAL" throughout this Subsection.

b. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this Subsection, and complies with the PAL permit:

- i. is not a major modification for the PAL pollutant;
- ii. does not have to be approved through the PSD program; and
- iii. is not subject to the provisions in Paragraph R.4 of this Section, regarding restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program.

c. Except as provided under Clause AA.1.b.iii of this Section, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

2. Definitions. For the purposes of this Section, the following definitions apply. When a term is not defined in this Paragraph, it shall have the meaning given in Subsection B of this Section or in the Clean Air Act.

a. *Actuals PAL*—a PAL for a major stationary source based on the *baseline actual emissions*, as defined in Subsection B of this Section, of all *emissions units*, as defined in Subsection B of this Section, at the source that emit or have the potential to emit the PAL pollutant.

b. *Allowable Emissions*—as defined in Subsection B of this Section, except with the following modifications.

- i. The *allowable emissions* for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.
- ii. An emissions unit's potential to emit shall be determined using the definition in Subsection B of this Section, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

c. *Small Emissions Unit*—an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection B of this Section or in the Clean Air Act, whichever is lower.

d. *Major Emissions Unit*—any emissions unit that limits or has the potential to emit:

i. 100 tons per year or more of the PAL pollutant in an attainment area; or

ii. the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

e. *Plantwide Applicability Limitation (PAL)*—an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this Subsection.

f. *PAL Effective Date*—the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

g. *PAL Effective Period*—the period beginning with the date of issuance of the PAL permit and ending 10 years later.

h. *PAL Major Modification*—any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL, notwithstanding the definitions for *major modification* and *net emissions increase* in Subsection B of this Section.

i. *PAL Permit*—the permit issued by the administrative authority that establishes a PAL for a major stationary source.

j. *PAL Pollutant*—the pollutant for which a PAL is established at a major stationary source.

k. *Significant Emissions Unit*—an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the *significant* level, as defined in Subsection B of this Section or in the Clean Air Act, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a *major emissions unit* as defined in this Paragraph.

3. Permit Application Requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the administrative authority for approval:

a. a list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit;

b. calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction;

c. the calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for

each month as required by Subparagraph AA.13.a of this Section.

#### 4. General Requirements for Establishing PALs

a. The administrative authority may establish a PAL at a major stationary source, provided that, at a minimum, the following requirements are met.

i. The PAL shall impose an emission limitation that is federally enforceable and enforceable as a practical matter, for the entire major stationary source. The major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a rolling 12-month average).

ii. The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection Q of this Section.

iii. The PAL permit shall contain all the requirements of Paragraph AA.7 of this Section.

iv. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

v. Each PAL shall regulate emissions of only one pollutant.

vi. Each PAL shall have a PAL effective period of 10 years.

vii. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Paragraphs AA.12-14 of this Section for each emissions unit under the PAL through the PAL effective period.

b. At no time, during or after the PAL effective period, are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

5. Public Participation Requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161. This includes the requirement that the administrative authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The administrative authority must address all material comments before taking final action on the permit.

6. Setting the 10-year Actuals PAL Level. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant. When establishing the actuals PAL level for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the

potential to emit of the units. The administrative authority shall specify a reduced PAL level (in tons/yr) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirement that the administrative authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

7. Contents of the PAL Permit. The PAL permit must contain, at a minimum, the following information:

a. the PAL pollutant and the applicable source-wide emission limitations in tons per year;

b. the PAL permit effective date and the expiration date of the PAL (i.e., the PAL effective period);

c. specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Paragraph AA.10 of this Section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period, but shall remain in effect until final action is taken by the administrative authority on the application for renewal;

d. a requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions;

e. a requirement that, once the PAL expires, the major stationary source is subject to the requirements of Paragraph AA.9 of this Section;

f. the calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by Subparagraph AA.13.a of this Section;

g. a requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Paragraph AA.12 of this Section;

h. a requirement to retain the records required under Paragraph AA.13 of this Section on site. Such records may be retained in an electronic format;

i. a requirement to submit the reports required under Paragraph AA.14 of this Section by the required deadlines;

j. any other requirements that the administrative authority deems necessary to implement and enforce the PAL.

8. PAL Effective Period and Reopening of the PAL Permit

a. PAL Effective Period. The administrative authority shall specify a PAL effective period of no more than 10 years.

b. Reopening of the PAL permit

i. During the PAL effective period, the administrative authority must reopen the PAL permit to:

(a) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(b) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets;

(c). revise the PAL to reflect an increase in the PAL as provided under Paragraph AA.11 of this Section;

(d). reduce the PAL to reflect newly applicable requirements (e.g., NSPS or MACT) with compliance dates after the PAL effective date.

ii. The administrative authority shall have discretion to reopen the PAL permit.

iii. Except for the permit reopening in Clause AA.8.b.ii of this Section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Subsection Q of this Section.

9. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Paragraph AA.10 of this Section shall expire at the end of the PAL effective period, and the following requirements shall apply.

a. Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

i. Within the time frame specified for PAL renewals in Subparagraph AA.10.b of this Section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit, or each group of emissions units, if such a distribution is more appropriate as decided by the administrative authority, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Subparagraph AA.10.e of this Section, such distribution shall be made as if the PAL had been adjusted.

ii. The administrative authority shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the administrative authority determines is appropriate.

b. Reserved.

c. Until the administrative authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Clause AA.9.a.ii of this Section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

d. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of *major modification* in Subsection B of this Section.

e. The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.).

#### 10. Renewal of a PAL

a. The administrative authority shall follow the procedures specified in Paragraph AA.5 of this Section in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such a public review, any

person may propose a PAL level for the source for consideration by the administrative authority.

b. Application Deadline. A major stationary source owner or operator shall submit a timely application to the administrative authority to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the administrative authority takes final action on the application for renewal.

c. Application Requirements. The application to renew a PAL permit shall contain the following information:

i. the information required in Subparagraphs AA.3.a-c of this Section;

ii. a proposed PAL level;

iii. the sum of the potentials to emit of all emissions units under the PAL, with supporting documentation;

iv. any other information the owner or operator wishes the administrative authority to consider in determining the appropriate level for renewing the PAL.

d. PAL Adjustment. In determining whether and how to adjust the PAL, the administrative authority shall consider the options outlined in Clauses AA.10.d.i and ii of this Section. However, in no case may any such adjustment fail to comply with Clause AA.10.d.iii of this Section.

i. If the emissions level calculated in accordance with Paragraph AA.6 of this Section is equal to or greater than 80 percent of the PAL level, the administrative authority may renew the PAL at the same level without considering the factors set forth in Clause AA.10.d.ii of this Section.

ii. The administrative authority may set the PAL at a level that is determined to be more representative of the source's baseline actual emissions, or that is determined to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the administrative authority in its written rationale.

iii. Notwithstanding Clause AA.10.d.i of this Section:

(a) if the potential to emit of the major stationary source is less than the PAL, the administrative authority shall adjust the PAL to a level no greater than the potential to emit of the source; and

(b) the administrative authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Paragraph AA.11 of this Section, regarding increasing a PAL.

e. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the administrative authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

#### 11. Increasing a PAL During the PAL Effective Period

a. The administrative authority may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

i. The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

ii. As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

iii. The owner or operator obtains a major NSR permit for all emissions units identified in Clause AA.11.a.i of this Section, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the major NSR process (e.g., BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

iv. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

b. The administrative authority shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the PAL baseline emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with Clause AA.11.a.ii of this Section, plus the sum of the PAL baseline emissions of the small emissions units.

c. The PAL permit shall be revised to reflect the increased PAL level in accordance with the public notice requirements of Subsection Q of this Section.

## 12. Monitoring Requirements for PALs

### a. General Requirements

i. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such a system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

ii. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Clauses AA.12.b.i-iv of this Section and must be approved by the administrative authority.

iii. Notwithstanding Clause AA.12.a.ii of this Section, the owner or operator may employ an alternative monitoring approach that meets Clause AA.12.a.i of this Section if approved by the administrative authority.

iv. Failure to use a monitoring system that meets the requirements of this Paragraph renders the PAL invalid.

b. Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Subparagraphs AA.12.c-j of this Section:

i. mass balance calculations for activities using coatings or solvents;

ii. CEMS;

iii. CPMS or PEMS; and

iv. emissions factors.

c. Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

i. provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

ii. assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

iii. where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the administrative authority determines there is site-specific data or a site-specific monitoring program to support another content within the range.

d. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

i. CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

ii. CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

e. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

i. the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

ii. each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the administrative authority, while the emissions unit is operating.

f. Emission Factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

i. all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development; and

ii. the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

iii. if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the administrative authority determines that testing is not required.

g. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

h. Notwithstanding the requirements in Subparagraphs AA.12.c-g of this Section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the administrative authority shall, at the time of permit issuance:

i. establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

ii. determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

i. Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the administrative authority. Such testing must occur at least once every five years after issuance of the PAL.

### 13. Recordkeeping Requirements

a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of Subsection AA of this Section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

b. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

i. a copy of the PAL permit application and any applications for revisions to the PAL; and

ii. each annual certification of compliance in accordance with the Title V permit and the data relied on in certifying the compliance.

14. Reporting and Notification Requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the administrative authority in accordance with the applicable Title V operating permit program. The reports shall meet the following requirements.

a. Semiannual Report. The semiannual report shall be submitted to the administrative authority within 30 days of the end of each reporting period. This report shall contain the following information:

i. the identification of the owner and operator, and the permit number;

ii. total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded in accordance with Subparagraph AA.13.a of this Section;

iii. all data relied upon, including but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

iv. a list of any emissions units modified or added to the major stationary source during the preceding 6-month period;

v. the number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action taken;

vi. a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Subparagraph AA.12.g of this Section;

vii. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

b. Deviation Report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedances of the PAL requirements, including periods where no monitoring is available. A report submitted in accordance with 40 CFR Part 70, General Condition R shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 40 CFR Part 70, General Condition R [40 CFR §70.6(a)(3)(iii)(B)]. The reports shall contain the following information:

i. the identification of the owner and operator, and the permit number;

ii. the PAL requirement that experienced the deviation or that was exceeded;

iii. emissions resulting from the deviation or the exceedance; and

iv. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

c. Revalidation Results. The owner or operator shall submit to the administrative authority the results of any revalidation test or method within three months after completion of such a test or method.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office

of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of Environmental Assessment, LR 31:

## AQ246L

### Title 33 ENVIRONMENTAL QUALITY Part III. Air

[Editor's Note: These changes supersede AQ246F.]

#### Chapter 5. Permit Procedures

##### §509. Prevention of Significant Deterioration

###### A. Applicability Procedures

1. The purpose of this Section is to implement the prevention of significant deterioration program, as set forth in Sections 160 - 169B of the federal Clean Air Act, 42 U.S.C. §§ 7470-92. The requirements of Subsections J-R of this Section shall apply to the construction of major stationary sources and major modifications with respect to each pollutant subject to regulations under this Section that they would emit, except as this Section otherwise provides. No provision of this part applies to Indian reservations, meaning any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

2. ... [See AQ246F]

3. The requirements of the program will be applied in accordance with the principles set out in this Paragraph as follows. Before beginning actual construction of a project, the owner or operator shall determine applicability of this Section in accordance with Subparagraphs A.3.a-e of this Section.

a. ... [See AQ246F]

b. The emissions increase from the project is determined by taking the sum of the emissions increases from each emissions unit affected by the project. An emissions unit is considered to be affected by the project if an emissions increase from the unit would occur as a result of the project, regardless of whether a physical change or change in the method of operation will occur at the particular emissions unit.

c. Existing Emissions Units

i. For each existing emissions unit affected by the project, the emissions increase is determined by taking the difference between the projected actual emissions, following completion of the project, and the baseline actual emissions.

ii. In lieu of Clause A.3.c.i of this Section, the owner or operator may elect to determine the emissions increase by taking the difference between the potential to emit, following completion of the project, and the baseline actual emissions.

d. For each new emissions unit affected by the project, the emissions increase is equal to its potential to emit.

e. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

4. - 5. ... [See AQ246F]

B. Definitions. For the purpose of this Part the terms below shall have the meaning specified herein as follows.

\* \* \*

[See AQ246F]

**Allowable Emissions** The emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. the applicable standards as set forth in 40 CFR Parts 60, 61, and 63;

2. ... [See AQ246F]

3. the emissions rate specified under any requirement or permit condition that is federally enforceable or enforceable as a practical matter, including those with a future compliance date.

**Baseline Actual Emissions** The rate of emissions, in tons per year, of a pollutant subject to regulation under this Section, as determined below.

1. ... [See AQ246F]

a. The average rate shall include fugitive emissions to the extent quantifiable, and any authorized emissions associated with startup and shutdown; the average rate shall not include excess emissions or emissions associated with upsets or malfunctions.

b. ... [See AQ246F]

c. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitation during the consecutive 24-month period.

d. When a project involves multiple emissions units or multiple pollutants subject to regulation under this Section, or both, only one consecutive 24-month period must be used to determine the baseline actual emissions for all pollutants and for all the emissions units affected by the project.

e. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs 1.b and c of this definition.

2. ... [See AQ246F]

a. The average rate shall include fugitive emissions to the extent quantifiable, and any authorized emissions associated with startup and shutdown; the average rate shall not include excess emissions or emissions associated with upsets or malfunctions.

b. ... [See AQ246F]

c. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitation during the consecutive 24-month period.

d. When a project involves multiple emissions units or multiple pollutants subject to regulation under this Section, or both, only one consecutive 24-month period must be used to determine the baseline actual emissions for all

pollutants and for all the emissions units affected by the project.

e. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs 2.b and c of this definition.

3. - 4. ... [See AQ246F]

5. Baseline actual emissions shall be determined by measurement, calculations, estimations, and recordkeeping in the order of the following preferences:

a. monitoring systems:

i. continuous emission monitoring system (CEMS) data; or

ii. predictive emission monitoring system (PEMS) data;

b. other measurements and calculations:

i. stack emission testing;

ii. mass balance; or

iii. emission factors; and

c. recordkeeping. In instances where measurements of operating hours or fuel combusted (hour meter or fuel flow meter) are not available, annual emissions may be calculated using available records, such as production records, fuel consumption records, fuel purchase receipts, laboratory reports on fuel analysis, third party records, etc.

\*\*\*

[See AQ246F]

#### **Baseline Date**

1. - 4. ... [See AQ246F]

5. Baseline dates established prior to [insert rule adoption date] will remain in effect.

\*\*\*

[See AQ246F]

#### **Best Available Control Technology (BACT)**

1. ... [See AQ246F]

2. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by an applicable standard under 40 CFR Parts 60, 61, and 63. If the administrative authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means that achieve equivalent results.

\*\*\*

[See AQ246F]

**Calendar Year Emissions** The rate of emissions of a pollutant subject to regulation under this Section, in tons per year, from an emissions unit during a calendar year.

\*\*\*

[See AQ246F]

**Emissions Unit** Any part of a stationary source that emits or would have the potential to emit any pollutant subject to

regulation under this Section. For purposes of this Section, there are two types of emissions units.

1. A *new emissions unit* is any emissions unit that is, or will be, newly constructed and that has existed for less than two years from the date such emissions unit first operated. Any emissions unit that is constructed or installed for the purpose of replacing an existing unit, or any emissions unit that is relocated from another stationary source for the purpose of replacing an existing unit, shall be considered a new emissions unit at the time of replacement and until two years from the date such new unit commenced operation.

2. An *existing emissions unit* is any emissions unit that is not a new emissions unit.

\*\*\*

[See AQ246F]

**Federally Enforceable** Call limitations and conditions that are enforceable by the administrative authority, including those requirements developed in accordance with 40 CFR Parts 60, 61, and 63, requirements within any applicable state implementation plan, any permit requirements established in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.

\*\*\*

[See AQ246F]

#### **Major Modification**

1. - 2. ... [See AQ246F]

3. A physical change or change in the method of operation shall not include:

a. routine maintenance, repair, and replacement. In determining whether an activity at a facility constitutes routine maintenance, repair, or replacement, the owner or operator shall consider the nature, extent, purpose, frequency, and cost of the work to be performed. Routine maintenance, repair, and replacement activities are narrow in scope, do not result in increased capacity, occur with regular frequency, and involve limited expense;

3.b. - 4. ... [See AQ246F]

\*\*\*

[See AQ246F]

#### **Net Emissions Increase**

1. - 4. ...

5. An increase in actual emissions is creditable only to the extent that the new level of allowable emissions exceeds the baseline actual emissions for the contemporaneous change.

6. A decrease in actual emissions is creditable only to the extent that:

a. the baseline actual emissions, or the old level of allowable emissions, for the contemporaneous change, whichever is lower, exceeds the new level of allowable emissions;

b. the new level of allowable emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

c. it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and



d. the decrease in emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit or a PCP.

7. ...

**Pollution Control Project (PCP)** At an existing emissions unit, any activity, set of work practices, or project (including pollution prevention), the primary purpose of which is to reduce emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Such activities, work practices, or projects cannot include the replacement of an existing emissions unit with a newer or different unit, or the reconstruction of an existing emissions unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. The following projects carry the rebuttable presumption that they are environmentally beneficial in accordance to Subparagraph Z.2.a of this Section. The administrative authority has the authority to rebut such presumption and determine that the project is not environmentally beneficial and that the project does not qualify as a PCP. Projects not listed in these paragraphs may qualify for a case-specific PCP exclusion in accordance with the requirements of Paragraphs Z.2 and 5 of this Section:

1. - 2. ... [See AQ246F]

3. flue gas recirculation, low-NO<sub>x</sub> burners or combustors (except those that increase fuel-burning capacity), selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO<sub>x</sub>;

4. regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this Section, *hydrocarbon combustion flare* means either a flare used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under such a standard, or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide. Projects that involve the use of regenerative thermal oxidizers, catalytic oxidizers, or thermal incinerators for the control of gases that contain sulfur-bearing compounds and that result in increases of sulfur dioxide or sulfuric acid mist by a significant amount do not qualify as PCPs unless such oxidizers or incinerators are equipped with control devices that result in a removal efficiency of at least 90 percent of the sulfur-bearing compounds;

5. - 6.b.iii. ... [See AQ246F]

iv. if the value calculated in Clause 6.b.ii of this definition is more than the value calculated in Clause 6.b.iii of this definition, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS;

c. the activity or project undertaken does not involve switching from a non-VOC to a VOC ODS.

\* \* \*

[See AQ246F]

**Potential to Emit** The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter. Secondary emissions do not count in determining the *potential to emit* of a stationary source.

\* \* \*

[See AQ246F]

**Project** The set of related physical changes, or changes in the method of operation, that comprise a program of construction at a stationary source, to be completed within a reasonable time. Such a set shall not include physical changes or changes in the method of operation specified in Subsection B. *Major Modification*.3 of this Section.

\* \* \*

[See AQ246F]

C. - E.4.b. ... [See AQ246F]

5. The following area that was in existence on August 7, 1977, shall be Class I and may not be redesignated: Breton National Wildlife Refuge.

F. - I.10.b. ... [See AQ246F]

J. Control Technology Evaluation

1. A major stationary source or major modification shall meet each applicable emissions limitation under the Louisiana state implementation plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60, 61, and 63.

J.2. - Q.8.b. ... [See AQ246F]

R. Source Obligation

1. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted in accordance with this Section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Section who commences construction after the effective date of these regulations without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action. No major stationary source or major modification to which the requirements of this Section apply shall begin actual construction without a permit issued under this Section.

2. - 5. ... [See AQ246F]

6. Monitoring, Recordkeeping, and Reporting. The provisions of this Paragraph apply to any project for which the emissions increase is determined only by taking the difference between the potential to emit, following completion of the project, and the baseline actual emissions, and that, although it would result in a significant emissions increase, is not a major modification because it would not result in a significant net emissions increase.

6.a. - 7. ... [See AQ246F]

8. The requirements of Subsections J-R of this Section shall apply as if construction has not yet commenced at any time that a project is determined to be a major modification based on any credible evidence, including but not limited to emissions data produced after the project is completed. In

any such case, the owner or operator may be subject to enforcement for failure to obtain a PSD permit prior to beginning actual construction.

9. If an owner or operator materially fails to comply with the provisions of Paragraph R.6 of this Section, then the calendar year emissions are presumed to equal the source's potential to emit.

10. Revisions to Projected Actual Emissions. For projects originally evaluated in accordance with Paragraph A.3 of this Section and determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines that the project has resulted or will now result in a significant net emissions increase, the owner or operator shall:

a. request that the administrative authority limit the potential to emit of the affected emissions units as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result; or

b. submit a revised PSD application within 90 days.

S. - W.2. ... [See AQ246F]

3. The administrative authority shall grant an application for rescission if the application shows that this Section, as it existed at the time the permit was issued, would not apply to the source or modification.

4. ... [See AQ246F]

X. Clean Unit Status Designation, Maintenance, and Renewal

1. Applicability. The provisions of this Subsection apply to any emissions unit for which the administrative authority has issued a major NSR permit establishing BACT or LAER or a permit establishing Clean Unit status on or after [insert date of rule adoption].

2. ... [See AQ246F]

a. For a major modification that would affect a Clean Unit without causing the emissions unit to lose its Clean Unit designation, the BACT determination that was relied upon for the Clean Unit designation shall serve to meet the BACT requirement of Subsection J of this Section with respect to the Clean Unit.

b. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance with Paragraph X.4 of this Section, and before the expiration date, as determined in accordance with Paragraph X.5 of this Section, will be considered to have occurred while the emissions unit was a Clean Unit.

c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or LAER or the project would alter any physical or operational characteristics that formed the basis for the BACT or LAER determination as specified in Subparagraph X.6.d of this Section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit re-qualifies as a Clean Unit in accordance with Subparagraph X.3.c of this Section. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

3. Qualifying or Re-qualifying as a Clean Unit. An emissions unit initially qualifies as a Clean Unit when the unit meets the criteria in this Paragraph. After the original Clean Unit expires in accordance with Paragraph X.5 of this Section or is lost in accordance with Subparagraph X.2.c of this Section, such emissions unit may re-qualify as a Clean Unit under Subparagraph X.3.c of this Section. The Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

a. Permitting Requirement. On or after [insert date two years prior to the date of rule adoption], the emissions unit must have received a major NSR permit establishing BACT or LAER for the unit. If the major NSR permit was issued prior to [insert date of rule adoption], then the owner or operator must submit an application for an administrative amendment to its major NSR permit, or its Title V permit, indicating the emissions unit that qualifies for Clean Unit status. If the application is approved, the administrative authority shall specify the emission limits and work practice requirements adopted in conjunction with BACT or LAER and any physical or operational characteristics that formed the basis of the BACT or LAER determination that must be met to maintain the Clean Unit designation.

b. - b.ii. ... [See AQ246F]

c. Re-qualifying for the Clean Unit Designation. The administrative authority may allow an emissions unit to re-qualify as a Clean Unit. To obtain re-qualification status, the owner or operator of the unit must demonstrate to the satisfaction of the administrative authority that the unit meets BACT or LAER at the time of application for renewal. Such demonstration shall be submitted as part of the source's Title V permit modification or renewal application and shall be acted on by the administrative authority as part of its final action on the Title V permit. The administrative authority may require an air quality impact analysis if appropriate, for example, if stack parameters have changed.

4. Effective Date of the Clean Unit Designation. The effective date of an emissions unit's Clean Unit designation is the date the owner or operator obtains authorization in accordance with Paragraph X.3 of this Section to treat the unit as a Clean Unit.

5. Clean Unit Expiration. An emissions unit's Clean Unit designation expires five years after the effective date or at an earlier time specified by the administrative authority at the time of Clean Unit designation or at any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in Paragraph X.7 of this Section.

6. - 7. ... [See AQ246F]

a. The Clean Unit must comply with the emission limitations and/or work practice requirements adopted in conjunction with BACT or LAER that are recorded in the major NSR permit or permit designating the unit as a Clean Unit or in the Clean Unit designation letter issued by the administrative authority in accordance with Paragraph X.3 of this Section, and subsequently reflected in the Title V permit. The Clean Unit must be operated within the physical and operational parameters on which the Clean Unit designation was based, as specified in the major NSR permit and subsequently reflected in the Title V permit.

b. The Clean Unit must comply with any terms and conditions in the NSR permit and associated Title V permit related to the unit's Clean Unit designation.

7.c. - 8. ... [See AQ246F]

9. Effect of Redesignation on the Clean Unit Designation. If a unit for which the Clean Unit designation is based on BACT is located in an area that is redesignated to nonattainment, the unit's Clean Unit designation is automatically revoked upon such nonattainment designation.

Y. ... [See AQ246F]

Z. Pollution Control Projects (PCPs). PCPs may be approved according to the following provisions.

1. Before an owner or operator begins actual construction of a PCP, the owner or operator must submit a permit application. The project must meet the requirements in Paragraph Z.2 of this Section, and the notice or permit application must contain the information required in Paragraph Z.3 of this Section.

a. For projects listed in Subsection B. *Pollution Control Project* of this Section, once the owner or operator has submitted the application, he or she may proceed with the project at his or her own risk. If the administrative authority does not approve the application for a PCP, the project shall be considered a major modification, and the owner or operator may be subject to enforcement for failure to obtain a PSD permit prior to beginning actual construction.

b. All other projects require administrative authority approval prior to construction consistent with the requirements in Paragraph Z.5 of this Section.

2. ... [See AQ246F]

a. Environmentally Beneficial Analysis. The environmental benefit from the emissions reductions must outweigh the environmental detriment of emissions increases, considering the relative emissions levels of the pollutants in question, their relative increases and decreases, their predicted ambient levels, ambient air quality standards and guidelines, the toxicity of the pollutants, and any other relevant factors.

2.b. - 3.d. ... [See AQ246F]

e. a demonstration, to the administrative authority's satisfaction, that the maximum allowable emissions from the project will not cause or contribute to a violation of any national or Louisiana ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager. The administrative authority may approve the use of screening air quality modeling or the use of worst case air quality modeling already on record that the agency determines adequately addresses the maximum potential emissions from the PCP. The administrative authority may require that the demonstration meet any or all of the requirements of Subsections K-P of this Section as reasonable and necessary to ensure the protection of air quality. An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase, evaluated on an actual to potential basis, as a result of the project;

f. a demonstration, to the administrative authority's satisfaction, that the project is environmentally beneficial as provided in Subparagraph Z.2.a of this Section. A statement that a technology from Subsection B. *Pollution Control*

*Project* of this Section is being used shall be presumed to satisfy this requirement, though the administrative authority has the authority to rebut that presumption and determine that the project is not environmentally beneficial and the project does not qualify as a PCP;

g. any additional information required by the administrative authority.

4. ... [See AQ246F]

5. Permit Process. Before an owner or operator may begin actual construction of a PCP that is not listed in Subsection B. *Pollution Control Project* of this Section, the project must be approved by the administrative authority through the inclusion of a permit. The administrative authority will provide the public with notice of the proposed approval and with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public to submit comments. The public notice process will follow LAC 33:III.531 and 533. The administrative authority must address all material received by the end of the comment period before taking final action on the permit.

6. - 6.c. ... [See AQ246F]

d. Generation of Emission Reduction Credits. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase or generating emission offset credits. Future emission reductions achieved at the emissions unit after qualifying for the PCP exclusion may be creditable to the extent they meet the requirements for creditable decreases in emissions.

AA. - AA.2.e. ... [See AQ246F]

f. *PAL Effective Date*—the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant. The PAL limit that was in effect prior to the change shall remain in effect until the PAL is effective.

2.g. - 3.b. ... [See AQ246F]

c. the calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subparagraph AA.13.a of this Section;

d. a demonstration that a source operating under the PAL will not have an adverse air quality impact. The administrative authority may require that the demonstration include any or all of the requirements set forth in Subsections K-P of this Section;

e. any other information required by the administrative authority.

4. - 4.a.vi. ... [See AQ246F]

vii. The PAL permit shall contain monitoring, recordkeeping, and reporting conditions consistent with Paragraphs AA.12-14 of this Section.

viii. The owner or operator of a major stationary source with a PAL permit shall install BACT with respect to the PAL pollutant on any new significant or reconstructed major emissions unit for which construction is commenced during the PAL effective period.

4.b. - 5.... [See AQ246F]

6. Setting the Actuals PAL Level

a. The initial PAL level for a major stationary source shall be established as follows:

i. the significant level for the PAL pollutant under Subsection B of this Section or under the Clean Air Act, whichever is lower; plus

ii. the sum of the *baseline actual emissions*, as defined in Subsection B of this Section, of the PAL pollutant for each emissions unit at the source; plus

iii. PAL baseline emissions from any emissions unit that has been permanently shut down shall not be included.

b. The administrative authority shall establish a future effective PAL adjustment in the PAL permit to reflect a reduction (in tons/year) for any applicable federal or state regulatory requirement with a future compliance date.

7. ... [See AQ246F]

a. the PAL pollutant and the applicable source-wide emission limitations in tons per year and their effective dates.

b. - c. ... [See AQ246F]

d. a requirement that emission calculations for compliance purposes must include any noncompliance emissions in excess of any emissions limitations, and emissions associated with startups, shutdowns, and malfunctions;

7.e. - 8.b.i.(c). ... [See AQ246F]

(d). reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation;

(e). reduce the PAL to reflect newly applicable requirements (e.g., NSPS or MACT) with compliance dates after the PAL effective date.

ii. The administrative authority shall have discretion to reopen the PAL permit for cause consistent with LAC 33:III.529.

8.b.iii. - 10.c.iii. ... [See AQ246F]

iv. any other information the owner or operator wishes the administrative authority to consider in determining the appropriate level for renewing the PAL;

v. additional information as requested by the administrative authority to make a determination on the renewal request.

10.d. - 11.a.iv. ... [See AQ246F]

b. The administrative authority shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the PAL baseline emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with Clause AA.11.a.ii of this Section, plus the sum of the PAL baseline emissions of the small emissions units, plus the significance level.

11.c. - 12.b. ... [See AQ246F]

i. mass balance calculations for activities using coatings or solvents and sulfur dioxide calculations for fuel burning sources;

ii. - iii. ... [See AQ246F]

iv. emissions factors for small emissions units if mass balance calculations specified under Clause AA.12.b.i of this Section are not feasible.

12.c. - 14.a. ... [See AQ246F]

i. the identification of the owner and operator, the permit number, and the agency interest number;

ii. - vi. ... [See AQ246F]

vii. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report;

viii. if new control equipment is being installed in accordance with Clause AA.4.a.viii of this Section, a description of the control equipment to be installed and the potential to emit and projected actual emissions from the applicable unit.

14.b. ... [See AQ246F]

i. the identification of the owner and operator, the permit number, and the agency interest number;

b.ii. - c. ... [See AQ246F]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of Environmental Assessment, LR 31:

Wilbert F. Jordan, Jr.  
Assistant Secretary

0411#057

## 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
Harold L. McClusky	Big Island	M	Wilson	1	109824
Harold L. McClusky	Big Island	M	Wilson	2	112114
Tracker Oil & Gas, Inc.	Big Lake	L	Margaret Manning	001	131284
Tracker Oil & Gas, Inc.	Big Lake	L	Margaret Manning	001-D	133724
Tracker Oil & Gas, Inc.	Big Lake	L	East Lake Townsite G Swd	001	142282
Tracker Oil & Gas, Inc.	Big Lake	L	East Lake Townsite G	001-D	142954
Tracker Oil & Gas, Inc.	Grand Cheniere, South	L	Doland Sua; D Y Doland	001	73109

Tracker Oil & Gas, Inc.	Grand Cheniere, South	L	Sgch E-D RA SU; D Y Doland	001-D	74582
Tracker Oil & Gas, Inc.	Livingston	L	WX 3 RA SUA; Crown Z	001	196298
Tracker Oil & Gas, Inc.	Livingston	L	WX 3 RA SUG; J W McManus 21-16	001	199373
Tracker Oil & Gas, Inc.	Unionville	M	CV Davis RA SU59; IDOM	001	204237
R.L. Carson	Caddo Pine Island	S	R J Price	1	34730
Courtney Oil Co.	Caddo Pine Island	S	P B Mcdade	002	103279
Courtney Oil Co.	Caddo Pine Island	S	P B Mcdade	001	154130
Courtney Oil Co.	Caddo Pine Island	S	Mcdade	001	176991
Courtney Oil Co.	Caddo Pine Island	S	Mcdade	005	179140

James H. Welsh  
Commissioner

0411#045

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

Legal Notice Docket No. IMD 99-03

Pursuant to the provisions of the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950 as amended, and the provisions of Statewide Order No. 29-B (LAC 43:XIX.Chapter 5), notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6 p.m., Tuesday, January 4, 2005, in the Davant Community Center, 15535 Highway 15, Davant, LA. This hearing will be the continuation of a previous public hearing that was held under Docket No. IMD 99-03 on Tuesday, March 23, 1999, in Pointe à la Hache, LA.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of Premier Environmental, LLC, 629 Village Lane South, Mandeville, LA 70471. The applicant requests approval from the Office of Conservation to store, treat, and dispose of exploration and production waste (E&P Waste) containing regulated levels of naturally occurring radioactive material (NORM) by means of deep well slurry fracture injection. The facility is located in Section 001, Township 17 South, Range 15 East, near Bohemia, LA in Plaquemines Parish, LA.

The application is available for inspection by contacting Mr. Eura DeHart, Office of Conservation, Injection & Mining Division, Room 817 of the LaSalle Building, 617 North Third Street, Baton Rouge, LA, or by visiting the Plaquemines Parish Council Office in Pointe à la Hache, Louisiana, or the Plaquemines Parish Library in Port

Sulphur, LA. Information may be received by calling Mr. Eura DeHart at (225) 342-5515.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Tuesday, January 11, 2005, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation  
Injection and Mining Division  
P.O. Box 94275  
Baton Rouge, LA 70804-9275  
Re: Docket No. IMD 99-03  
Commercial Facility  
Plaquemines Parish

James H. Welsh  
Commissioner

0411#037

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

Legal Notice Docket No. IMD 2005-01

Pursuant to the provisions of the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950 as amended, and the provisions of Statewide Order No. 29-B (LAC 43:XIX.Chapter 5), notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6 p.m., Wednesday, January 12, 2005, in the Webster Parish Police Jury Meeting Room of the Webster Parish Courthouse, 410 Main Street, Minden, LA.

At such hearing, the Commissioner, or his designated representative, will hear testimony relative to the application of Lebus Oilfield Service Company, P.O. Box 550, Overton, TX, 75684. The applicant requests approval from the Office of Conservation to store, treat, and dispose of exploration and production waste (E&P Waste) by means of deep well injection. The facility is located in Section 009, Township 18 North, Range 09 West, near Minden, LA in Webster Parish, LA.

The application is available for inspection by contacting Mr. Eura DeHart, Office of Conservation, Injection & Mining Division, Room 817 of the LaSalle Building, 617 North Third Street, Baton Rouge, LA, or by visiting the Webster Parish Police Jury in Minden, LA, or the Webster Parish Library in Minden, LA. Information may be received by calling Mr. Eura DeHart at 225/ 342-5515.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Wednesday, January 19, 2005, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation  
Injection and Mining Division  
P.O. Box 94275  
Baton Rouge, LA 70804-9275  
Re: Docket No. IMD 2005-01  
Commercial Facility  
Webster Parish

James H. Welsh  
Commissioner

0411#039

**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 8 claims in the amount of \$29,090.47 were received for payment during the period October 1, 2004-October 31, 2004.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2907.341	9006.317	Lafourche
2909.270	9005.940	Jefferson
2912.080	9001.290	Jefferson
2915.326	8959.576	Jefferson
2917.742	8953.688	Jefferson
2923.720	8953.810	Jefferson
2933.477	8959.958	Plaquemines
2942.178	8951.241	Plaquemines

There were 8 claims paid and 0 claims denied.

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.

Scott A. Angelle  
Secretary

0411#044

**CUMULATIVE INDEX**  
**(Volume 30, Number 11)**

Pages	2004	Issue
1 - 170 .....		January
171 - 374 .....		February
375 - 710 .....		March
711 - 967 .....		April
968 - 1107.....		May
1108 - 1412.....		June
1413 - 1590.....		July
1591 - 1932.....		August
1933 - 2224.....		September
2225 - 2420.....		October
2421 - 2608.....		November

  

EO	Executive Order
PPM	Policy and Procedure Memoranda
ER	Emergency Rule
R	Rule
N	Notice of Intent
CR	Committee Report
GR	Governor's Report
L	Legislation
P	Potpourri

**ADMINISTRATIVE CODE UPDATE**

**Cumulative**

- January 2003 **C** December 2003, 161
- January 2004 **C** March 2004, 956
- January 2004 **C** June 2004, 1579
- January 2004 **C** September 2004, 2407

**AGRICULTURE AND FORESTRY**

**Agriculture and Environmental Sciences, Office of**

**Boll Weevil Eradication Commission**

- Adjudicatory hearing, 164P, 356P
- Commercial feed fees, 7ER
- Eradication, 1510N, 2443R
- Program participation/fee payment/penalties, 274N, 1141R

**Fertilizer Commission**

- Fees, 195R
- Fertilizer sale
  - Tonnage reports/inspection fees, 8ER
- Malathion, 1417ER, 1964ER
- Organic farming, 1309N, 2255R

**Horticulture Commission**

- Retail floristry examination, 2572P

**Structural Pest Control Commission**

- License, 196R
- Termite minimum specifications, 105N, 1143R, 1614R, 2082N

**Agro-Consumer Services, Office of**

**Weights and Measures Commission**

- Market bulletin subscriber fee, 2084N
- Petroleum products
  - Motor vehicle fuels, sale of, 1419ER, 2235ER
  - Standards, 1422ER, 1511N, 1966ER, 2084N
- Taxi meter registration, 102N, 1142R

**Commissioner, Office of the**

**Advisory Commission on Pesticides**

- Pesticide
  - 2, 4-D, application of, 969ER
  - Aerial, commercial applications, 1964ER
  - Icon, use of, 716ER
  - Restrictions, 716ER
  - Testing fees, 197R

**Agricultural Commodities Commission**

- Alternative livestock, 375ER
- Chloramphenicol in
  - crabs/crabmeat, 1120ER, 2226ER
  - honey, 174ER, 1123ER, 2229ER
  - shrimp/crawfish, 176ER, 1125ER, 2231ER
- Commodities, 197R

**Feed Commission**

- Inspection fees, 198R
- Meat and poultry inspections, 196R
- Pet turtles testing/quarantine, 103N, 275N, 514N, 970ER, 1445R
- Quarantine out-of-state apiaries, 702P

**Seed Commission**

- Bulk seed, 2092N
- Noxious weed seeds, 198R
- Seed certification standards, 2341N
- Sugarcane certification, 104N, 276N, 1142R
- Tropical soda apple, 198R

**Forestry, Office of**

- Indian Creek recreation area user fees, 195R
- Timber stumpage values, 356P
- Tree seedling prices, 200R

**Horticulture Commission**

- Landscape architect registration exam, 164P, 356P, 1922P, 2213P
- Quarantine listing, annual, 957P
- Retail floristry examination, 356P, 1097P, 1922P

**Livestock Sanitary Board**

- Mycoplasma bovis, 180ER, 1141R
- Public livestock auction charters, 2340N

**CIVIL SERVICE**

**Civil Service Commission**

- Bona fide student definition, 514N
- Elections, 1735N, 2444R
- Retesting standards, 277N

**Ethics, Board of**

- Campaign funds, receipt of, 2094N
- Ethics, 1311N
- Late filing fees, 2572P
- Return of funds/legislative session, 2572P

## CULTURE, RECREATION AND TOURISM

**State Museums, Office of**  
Building rental fees, 2119N

## ECONOMIC DEVELOPMENT

**Business Development, Office of**  
Research and development tax credit, 977R  
Small and Emerging Business Development Program, 108N, 753R  
Technology commercialization credit, 978R  
**Secretary, Office of the**  
Capital Companies Tax Credit Program, 33R, 375ER, 813N, 1594ER, 1616R  
Governor's Economic Development Rapid Response Program, 2425ER, 2499N

## EDUCATION

**Elementary and Secondary Education, Board of**  
Bulletin 110  
Comment period, 2213P  
Technology Education Content Standards, 1736N  
Bulletin 111  
Accountability, 514N, 763R, 816N, 1330N, 1445R, 1512N, 1619R, 1782N, 1996R, 2256R, 2342N, 2445R, 2501N  
Bulletin 112  
Louisiana English Language Development Standards, 768R  
Bulletin 113  
Louisiana's Reading and Language Competencies for New Teachers, 520N, 1449R  
Bulletin 114  
Automotive, carpentry and welding, 1786N  
Comment period, 2213P  
Bulletin 741  
American sign/foreign language, 394R  
Career and technical course offerings, 773R, 1816N  
Circular design for exceptional students, 774R  
GED age waiver requirements, 528N, 1457R  
Graduation exit exam, 2504N  
High school  
Diploma and endorsements, 278N, 1146R, 1332N, 2258R  
Graduation requirements, 818N, 1620R, 1822N  
Home school, 394R  
Instructional time requirement, 819N, 1621R  
Mathematics, 1335N, 2260R  
Nonpublic schools, 394R  
Pre-GED Skills Option Program, 395R, 1514N, 2446R  
Public school approval classifications, 1824N  
Record of suspensions or expulsions, 281N, 1148R  
Social studies, 282N, 1149R  
Teachers' retirement, part-time/seasonal/temporary, 280N, 1148R  
Bulletin 746  
Academically gifted, 1826N  
Add-on teaching level, 533N, 1336N, 1461R, 2261R  
Alternate certification, 396R  
Ancillary Superintendent/Education Leader 3, 2504N

Certification  
Criminal offenses policy, denial of, 1345N  
of personnel, 529N, 1458R  
Reading competencies policy, 289N, 1154R, 1340N, 2264R  
Special education  
certification structures/disabilities, 1831N  
undergraduate programs, 283N, 1150R, 1338N, 2263R, 2410P  
Suspension/revocation/reinstatement, 1345N, 1520N, 2269R, 2451R  
Validity/reinstatement/renewal/extension, 119N, 820N, 981R, 1621R  
Continuing learning units, 1828N  
Educational technology facilitation endorsement, 532N, 1460R  
Endorsements, deadline date for completing, 774R  
Foreign language PK-8 policy, 1825N  
Highly qualified teachers/paraprofessionals, 200R, 1828N  
HOUSSE requirements, 1828N  
New certification structure, 401R  
"Not new" teachers, 1518N, 2850R  
Practitioner teacher, 206R  
PRAXIS  
Exams, 400R, 775R, 2344N  
Passing Scores, 1515N, 2344N, 2447R  
Supervisor of student teaching policy, 1830N  
Temporary employment permit policy, 404R  
Twelve-hour rule policy, 535N, 1460R  
Bulletin 996  
Teacher Preparation Program, 821N, 1521N, 1622R, 2451R  
Bulletin 1179  
Driver Education/Traffic Safety Guide, 1529N, 2459R  
Bulletin 1196  
Food and Nutrition Programs, 1530N, 1532N, 2459R, 2461R  
Bulletin 1508  
Pupil Appraisal Handbook, 822N, 1623R, 1836N  
Bulletin 1525  
Guidelines for Personnel Evaluation, 1349N, 2272R  
Bulletin 1530  
Louisiana IEP Handbook for Students with Disabilities, 536N, 1462R  
Bulletin 1566  
High stakes testing policy, 407R  
Bulletin 1706  
Regulations for Implementation of the Children with Exceptionalities Act, 778R  
Bulletin 1794  
State Textbook Adoption Policy/Procedure Manual-Home Study Program, 780R  
Bulletin 1872  
Extended School Year Program Handbook, 1048N, 1997R  
Bulletin 1922  
Compliance monitoring procedures, 414R



## **EDUCATION (continued)**

### **Bulletin 1934**

Starting points preschool regulations, 853N, 1653R

### **Bulletin 1943**

Policies/Procedures for Louisiana Teacher Assistance and Assessment, 856N, 1655R, 2506N

### **Bulletin 1963**

Curriculum development, 209R

### **Bulletin 1977**

Business Education Content Standards  
Curriculum framework for Louisiana, 985R  
Standards, content and approval, 2500N  
Technical revisions of LAC 28.I, 1837N

## **Student Financial Assistance Commission**

### **Student Financial Assistance, Office of**

Scholarship/Grants, 8ER, 123N, 1159R  
Discharge of obligation, 545N, 780R, 1168R  
Eligibility, 1976ER  
Legislation 2004, 2120N  
Maintaining eligibility, 781R  
On-line application, 2015R  
Returning students, 546N, 1471R  
Youth ChalleNge Skills Program, 782R

## **Tuition Trust Authority**

### **Start Saving Program**

Bylaws, 785R  
Definitions, 717ER, 1066N, 2302R  
Deposits, 1066N, 2302R  
Earnings enhancements, 1129ER, 1534N, 2302R  
Education savings account, 786R, 2127N  
Interest rates 2004, 720ER, 860N, 1472R  
Refunds, 1983ER  
Trade date, 1168R

## **ENVIRONMENTAL QUALITY**

## **Environmental Assessment, Office of Environmental**

### **Planning Division**

Accident prevention regulations-IBR, 2128N, 2463R  
Bacterial criteria, 860N, 1473R  
Changes to proposed rule, 1097P  
Confidential information and records, 742R  
Contaminated media sites remediation, 722ER, 1598ER  
Corrections to errors in entire LAC 33, 2020R  
Expedited penalty agreement, 378ER, 1429ER, 2428ER  
Fee number/Title V facilities, 863N, 1475R  
Fugitive emission control, 296N, 1659R, 2030R  
General air permit template, 2410P  
Hazardous waste delisting, 1839N, 2463R  
Health/safety and generally licensed updates, 1379N, 1662R  
Incorporation by reference 2003, 299N, 548N, 750R, 1008R  
Interpollutant trading, 1079N  
LPDES water quality regulation restructure, 229R  
NCR authorization cleanup package, 2345N  
New source review procedures nonattainment, 752R, 2573P

Nitrogen Oxides/NO<sub>x</sub> emissions

Contingency plan, 293N, 1169R

Control of emissions, 748R

Organic compounds emissions, 744R

Outdated references of LAC, correction of, 1069N

Penalty

determination methodology, 421R

fees increase, 2129N

Public notice requirements, 1385N, 2032R

Radioactive material, medical use, 864N, 1171R

RCRA cluster XIII, 1387N, 1680R

Records confidentiality, 2129N

Rulemaking, advanced notice, 2573P

Severe ozone nonattainment area major source fee, 313N

Significant deterioration program, 2573P

SIP general revisions, 368P, 959P, 1922P, 2213P

Skin dose limits, corrections, clarifications, 551N, 1187R

Social security number confidentiality, 2130N

Surface water quality standards, 1845N, 2468R

Unauthorized discharges/emissions, 301N, 721ER, 1597ER, 1667R

Underground storage tanks, 357P, 1847N

Waste tire, 1599ER

Water quality management plan, 702P

## **Permits Division, Office of**

Emissions estimation, 9ER

## **EXECUTIVE ORDERS**

MJF 03-31 **B**ond Allocation **L**ouisiana Public Facilities Authority, 1EO

MJF 03-32 **B**ond Allocation **I**ndustrial Development Board of the City of New Orleans, Louisiana, Inc. **F**lorida II A, LLC, 1EO

MJF 03-33 **B**ond Allocation **I**ndustrial Development Board of the City of New Orleans, Louisiana, Inc. **G**uste I, LLC, 2EO

MJF 03-34 **B**ond Allocation **I**ndustrial Development Board of the City of New Orleans, Louisiana, Inc. **F**ischer III, LLC, 2EO

MJF 03-35 **B**ond Allocation **I**ndustrial Development Board of the City of New Orleans, Louisiana, Inc. **S**avoy Place Associates, Limited Partnership, 2EO

MJF 03-36 **B**ond Allocation **L**ouisiana Public Facilities Authority **A**scension Water Company, 3EO

MJF 03-37 **B**ond Allocation **L**ouisiana Public Facilities Authority, Air Products and Chemicals **C**alcasieu Parish, 3EO

MJF 03-38 **B**ond Allocation **P**arish of Jefferson Home Mortgage Authority, 4EO

MJF 03-39 **B**ond Allocation **L**ouisiana Public Facilities Authority, 4EO

MJF 03-40 **H**ours of Service of Drivers of Gas and/or Electric Utility Service Vehicles, 5EO

MJF 04-01 **C**2003 Carry-Forward Bond Allocation Louisiana Housing Finance Agency Single Family Mortgage Revenue Bond Program, 171EO

**EXECUTIVE ORDERS (continued)**

MJF 04-02 **C**2003 Carry-Forward Bond Allocation Louisiana Housing Finance Agency Multi-Family Housing Development Program, 171EO  
 MJF 04-03 **C**Bond Allocation **C**Cost Limitation Waiver, 172EO  
 KBB 04-01 **C**Bond Allocation **C**Industrial Development Board of the Parish of Ouachita, Inc., 711EO  
 KBB 04-02 **C**Louisiana Interagency Action Council for the Homeless, 711EO  
 KBB 04-03 **C**Governors Advisory Council on Disability Affairs, 713EO  
 KBB 04-04 **C**Office of the First Gentleman, 714EO  
 KBB 04-05 **C**Louisiana Wild Caught Shrimp Industry Trade Action Advisory Council, 714EO  
 KBB 04-06 **C**Office of the Urban Affairs and Development, 968EO  
 KBB 04-07 **C**Vice-Chair of the Board of Parole, 1108EO  
 KBB 04-08 **C**Governor's Statewide Independent Living Council, 1108EO  
 KBB 04-09 **C**Louisiana NFL Stadium Advisory Commission, 1109EO  
 KBB 04-10 **C**Governor's Advisory Council on Safe and Drug-Free Schools and Communities, 1110EO  
 KKB 04-11 **C**Bond Allocation **C**Parish of East Baton Rouge, State of Louisiana, 1413EO  
 KKB 04-12 **C**Bond Allocation **C**Calcasieu Parish Public Trust Authority, 1413EO  
 KKB 04-13 **C**Bond Allocation **C**Louisiana Public Facilities Authority, 1414EO  
 KKB 04-14 **C**Bond Allocation **C**Louisiana Public Facilities Authority, 1415EO  
 KKB 04-15 **C**Inmate Labor, 1416EO  
 KKB 04-16 **C**Vice-Chair of the Board of Parole, 1591EO  
 KKB 04-17 **C**Call of Meetings of State Mineral Board, 1591EO  
 KKB 04-18 **C**Authorization to Chair of State Mineral Board to Sign Certain Documents on Governor's Behalf, 1592EO  
 KKB 04-19 **C**Office of Abstinence Education **C**Louisiana Abstinence Education Project **C**Governor's Program on Abstinence, 1592EO  
 KKB 04-20 **C**Louisiana Emergency Operations Plan, 1933EO  
 KKB 04-21 **C**Bond Allocation Procedures, 1940EO  
 KKB 04-22 **C**Inmate Labor, 1943EO  
 KKB 04-23 **C**Interstate 49 South Project Task Force, 1943EO  
 KKB 04-24 **C**Interstate 49 North Extension Feasibility and Funding Task Force, 1944EO  
 KKB 04-25 **C**Louisiana Highway 1 Project Task Force, 1946EO  
 KKB 04-26 **C**Royal Street Project Advisory Board, 1947EO  
 KKB 04-27 **C**Regional Trauma-Patient Care Statewide System Task Force, 1948EO  
 KKB 04-28 **C**Advisory Council on Child Care and Development Block Grant Program, 1949EO  
 KKB 04-29 **C**Bond Allocation - Louisiana Housing Finance Agency, 1950EO

KKB 04-30 **C**Small Purchase Procedures, 1951EO  
 KKB 04-31 **C**Louisiana D.A.R.E. Advisory Board, 1953EO  
 KKB 04-32 **C**Governor's Task Force on DWI-Vehicular Homicide, 1954EO  
 KKB 04-33 **C**Louisiana Rehabilitation Council, 1955EO  
 KKB 04-34 **C**Louisiana Emergency Response Commission, 1957EO  
 KKB 04-35 **C**State Hazard Mitigation Team, 1957EO  
 KKB 04-36 **C**Homeland Security Advisory Council, 1958EO  
 KKB 04-37 **C**Louisiana Historical Records Advisory Board, 1959EO  
 KKB 04-38 **C**Formosan Termite Task Force, 1961EO  
 KKB 04-39 **C**Louisiana Commission on Marriage and Family, 1962EO  
 KKB 04-40 **C**Advisory Council on Child Care and Development Block Grant Program, 2225EO  
 KBB 04-41 **C**Governor's Military Advisory Board, 2421EO  
 KKB 04-42 **C**Bond Allocation **C**Caddo/Bossier Parishes Port Commission, 2422EO  
 KKB 04-43 **C**Louisiana's Plan for Choice in Long-Term Care, 2422EO

**FIREFIGHTERS PENSION AND RELIEF FUND**  
**Firefighters Pension and Relief Fund for the City of New Orleans and Vicinity**

Partial lump-sum option payment, 881N, 1684R  
 Qualified domestic relations orders, 882N, 1685R

**GOVERNOR****Administration, Division of****Community Development, Office of**

Consolidated report/plan hearing, 959P

**Group Benefits, Office of**

EPO Plan of Benefits

Eligibility and medical benefits, 553N, 1189R

Hearing aids/minor dependents, 2134N

MCO Managed Care Option

Eligibility and medical benefits, 435R,

555N, 1191R

Hearing aids/minor dependents, 2135N

PPO Plan of Benefits

Eligibility and medical benefits, 556N, 1191R

Hearing aids/minor dependents, 2136N

**Planning and Budget/Office of**

Annual program evaluation reports, 2137N

**Racing Commission**

Claiming rule, 724ER, 970ER, 1476R

Ex Parte communications, 2507N

Penalty guidelines, 131N, 971ER, 1017R

Racing commissioners, 2508N

**Risk Management, Office of**

Claims, reporting of, 2138N

New mailing address, 369P

**State Travel, Office of**

General travel PPM 49, 1111PPM

## GOVERNOR (continued)

### Architectural Examiners, Board of

Per diem compensation, 315N, 1476R  
Violations, informal procedures, 883N, 2469R

### Elderly Affairs, Office of

State plan on aging, 1080N, 1695R

### Financial Institutions, Office of

Bank and thrift powers, 2152N  
Capitol companies tax credit, 10ER, 33R,  
813N, 1594ER, 1616R  
Investment limitations, 1534N, 2479R  
Limited function financial institutions, 2156N  
Repossession agents, 1984ER, 2157N  
Savings and loan holding companies, 2157N

### Home Inspectors, Board of

Home inspectors, 885N, 1686R

### Interior Designers, Board of Examiners of

Comprehensive rule revision, 124N, 1010R

### Law Enforcement and Administration of

#### Criminal Justice, Commission on

POST instructor development course, 130N,  
435R, 791R

### New Orleans/Baton Rouge Steamship Pilots,

#### Board Examiners for the

Drug and alcohol policy, enhanced, 38R  
General provisions, 1856N, 2471R  
Hearing on proposed rule, 2214P  
Mandatory rest period, 1984ER, 2133N

### Oil Spill Coordinator's Office

Duck Lake oil and gas spill, 2214P  
Lake Palourde oil spill, 702P

### Patient's Compensation Fund Oversight Board

Enrollment/surcharges, 132N, 1017R

### Real Estate Commission

Mold disclosure, 895N, 1477R  
Residential property disclosure, 557N, 1192R  
Transactions, 41R

### Recreational and Used Motor Vehicle Commission

Dealer licensing, 436R, 792R, 1477R  
License/Rent/Repossession/Marine, 1866N, 2480R  
Off-site displays and complaints, 316N,  
1018R

### River Port Pilot Commissioners, Board of

Calcasieu River Waterway  
Annual board meeting, 1080N, 1695R

### Workforce Commission, Office of

Top occupations in demand, 2004, 1098P

## HEALTH AND HOSPITALS

### Citizens with Developmental Disabilities, Office of

At-risk juveniles pilot programs, 2362N

### Dentistry, Board of

Licensure, investigations, continuing education,  
and anesthesia, 1535N, 2305R

### Electrologists Examiners, Board of

Electrologists instructors requirements, 792R

### Embalmers/Funeral Directors, Board of

Examinations, 164P, 1099P, 1923P  
Revision of entire LAC 46:XXXVII, 2158N

### Licensed Professional Vocational Rehabilitation Counselors, Board of Examiners

Fees, 799R  
Licensing and advisory opinions, 427R, 798R

### Medical Examiners, Board of

Dispensing medications, 134N, 1193R  
Fees  
Acupuncturists, 41R, 234R  
Athletic trainers, 42R, 234R  
Clinical exercise physiologists, 43R, 235R  
Licensing and practice, 2170N  
Midwives, 43R, 236R  
Occupational therapists/assistants, 44R, 237R,  
421R  
Office-based surgery, 424R  
Physician assistants, 45R, 237R, 2170N  
Physicians/Surgeons, 238R  
Podiatrists, 45R, 239R  
Respiratory therapists  
fees, 46R, 239R  
licensure, 134N

### Nursing, Board of

Criminal history record information, 2177N  
Hepatitis B and C, and HIV viruses, 1869N, 2482R  
Registration/licensure, 2177N

### Pharmacy, Board of

Pharmacy technicians, 1556N, 1872N, 2485R

### Physical Therapy Examiners, Board of

Practice, 1559N  
Services without prescription/referral, 2357N

### Policy Research Program Development, Bureau of

Human services statewide framework, 562N

### Practical Nurse Examiners, Board of

Public comment, licensure, adjudication, program  
evaluation, 895N, 1478R

### Psychologists, Board of Examiners of

Certificate of prescriptive authority, 2358N

### Public Health, Office of

Birth defects surveillance system, 317N, 1019R  
Disinfectant by-products/safe drinking water,  
704P, 1193R  
Maternal and child health, 1581P  
Preventative health/block grant hearing, 960P  
Safe Drinking Water Program, 1561N, 2325R  
WIC Program state plan, 2215P

### Secretary, Office of the

#### Community Supports and Services, Bureau of

Facility Need Review  
Bed abeyance, 149N  
Home/Community Based Waiver Program  
Adult day health care, 242R, 2034R  
Elderly and disabled adults, 1698R  
New opportunities waiver, 137N, 383ER,  
1201R, 1602ER, 2434ER

#### Health Services Financing, Bureau of

Adult Denture Program, 429R  
All inclusive care for the elderly, 244R  
Children's respite care centers, 2509N  
Clinic services, 1021R

## **HEALTH AND HOSPITALS (continued)**

Durable Medical Equipment Program  
Adult Denture Program, 2364N  
HIPAA implementation, 186ER, 559N, 1210R  
Hyperalimentation therapy, 2365N  
Insulin pumps, continuous subcutaneous,  
1082N, 1697R  
Medical equipment/supplies delivery, 1022R  
Motorized wheelchairs, 250R  
Negative pressure wound therapy, 899N, 1481R  
Prosthetics and Orthotics, 1604ER, 2178N,  
2433ER  
Reimbursement/prior authorization, 2369N  
Early and Periodic Screening, Diagnosis  
and Treatment Program  
Dental Program reimbursement, 11ER, 252R,  
1990ER  
Early intervention/disabilities, 147N,  
186ER, 800R  
Eyeglasses, 187ER, 560N, 1210R  
Health Services, 1605ER, 2243ER  
KidMed services, 12ER, 148N, 382ER,  
800R, 1084N, 1433ER, 1698R  
Personal care/extended nursing services, 252R,  
429R  
Eligibility  
Annuities, treatment of, 1581P  
Application  
Date, 1025R  
Filing, 902N, 1483R  
In-Kind support/maintenance disregard, 1875N,  
2489R  
Medically Needy Program  
Incurred deductions, 729ER, 1088N,  
1433ER, 1702R  
Facility Need Review  
Bed abeyance, 1023R  
Beds for ICF-MRs, 188ER, 901N,  
1136ER, 1483R  
Federally qualified health centers, 1393N, 2327R, 2487R  
Home health medical necessity, 430R  
Hospice, 320N, 1024R  
Hospitals  
Disproportionate share hospital, 181ER, 1129ER,  
2237ER  
Inpatient Services  
Admissions criteria, 46R, 240R  
Outlier payments  
Psychiatric residential treatment, 54R  
Private  
Psychiatric services, 727ER, 1437ER,  
1876N, 2246ER, 2489R  
Reimbursement reduction, 15ER,  
560N, 1137ER, 1211R  
Public  
Psychiatric, 12ER, 727ER, 1136ER,  
1437ER, 1876N, 2246ER, 2489R  
Upper payment limit, 254R  
State owned/operated  
Psychiatric reimbursement, 582N, 1211R  
Transplant services, 1607ER, 2437ER

Outpatient surgery services  
HIPAA implementation, 1395N, 2058R  
ICF-MR (Intermediate Care Facility-Mentally  
Retarded)  
Client and agency planning inventory,  
154N, 803R  
Reimbursement  
increase, 1438ER, 1877N, 2247ER, 2489R  
reduction, 16ER, 155N, 803R  
Standards for payment, 1086N, 1565N, 1700R  
Laboratory and X-ray  
X-ray portage fees, 18ER, 322N, 1025R  
Licensing, end-stage renal disease, 432R  
Medicaid estate recovery, 152N, 801R  
Medical procedures/devices, 383ER,  
1085N, 1135ER, 1698R  
Mental Health Rehabilitation Services  
Accreditation, 802R  
Provider enrollment moratorium, 1608ER,  
2438ER  
Reimbursement reduction, 13ER, 321N, 1025R  
Sanctions, 52R, 2406N  
Nursing Facilities Services  
Private, reimbursement reduction, 16ER,  
156N, 803R  
Public reimbursement, 53R  
Personal care services  
Long term care, 13ER, 724ER, 1089N, 1434ER,  
2438ER  
Pregnant women dental services, 189ER, 434R,  
2180N  
Professional Services Program  
Anesthesia/Anesthetists  
HIPAA implementation, 17ER  
Physician services, 728ER, 1609ER  
Reimbursement, 323N, 1026R  
Prosthetics, 1026R  
Rehabilitation Services Reimbursement, 190ER,  
324N, 392ER, 1034R  
Substance abuse/addiction treatment facilities,  
2529N  
Targeted case management, 1035R, 1392N, 2059R  
Transportation  
Non-emergency, 53R, 903N, 1484R, 2246ER  
**Speech Language Pathology and Audiology, Board  
of Examiners**  
Speech pathology and audiology, 1537N, 2307R  
**Veterinary Medicine, Board of**  
Board nominations, 164P  
Exam dates, 1581P  
Fee schedule, 1099P  
Fees/prescribing/dispensing drugs, 135N, 796R  
Professional conduct, partnerships, corporations,  
and limited liability companies, 1560N  
**Wholesale Drug Distributors, Board of**  
Board powers, 558N, 1481R

## **INSURANCE**

**Commissioner, Office of the**  
Commercial lines insurance rate deregulation, 2181N  
Long-term care insurance, 2533N

## LABOR

### Regulatory Services, Office of

Minor labor law, 1582P, 2059R

### Secretary, Office of the

Customized training fund, 1569N, 2329R

### State Plumbing Board

Continuing education, 904N, 2068R

### Workers' Compensation, Office of

Average weekly wage rate, 1923P, 2215P

Choice of physician form, 1396N, 2067R

Weekly compensation benefit limits, 1923P, 2216P

## LEGISLATION

### State Legislature, 2003 Regular Session

Administrative Procedure Act, 333L

## LSU HEALTH SCIENCES CENTER

### Health Care Services Division

Tumor registry, 2183N

## NATURAL RESOURCES

### Conservation, Office of

Fees, 1878N, 2494R

Ground water management, 583N, 729ER, 1212R

Orphaned oilfield sites, 164P, 369P, 704P, 961P,

1100P, 1405P, 1582P, 1923P, 2216P, 2411P, 2598P

Statewide order no. 29-B, 254R

Statewide order no. 29-L-3, 255R, 437R

### Injection and Mining Division

Legal notice docket no. IMD 99-03, 2598P

Legal notice docket no. IMD 2005-01, 2598P

### Pipeline Division

Hazardous liquids, 588N, 1216R

Natural gas, 589N, 1217R

Pipeline safety, 257R

### Secretary, Office of the

Fisherman's Gear Compensation Fund,

Loran coordinates 167P, 705P, 961P, 1100P,

1406P, 1584P, 1925P, 2412P, 2599P

Louisiana home energy rater, 2556N

## PUBLIC SAFETY AND CORRECTIONS

### Correction Services, Office of

Disciplinary rules, 675N

Records access

Adult, 75R, 264R

Juvenile, 77R

Telephone use, juvenile, 327N

Youth placement, 80R

### Fire Marshal, Office of the State

Fire codes, 1303R

### Gaming Control Board

Electronic gaming devices, 1880N

Promotions, 90R

Quarterly submission, 676N, 1703R

Rules of play, 1397N, 2490R

Self-exclusion, 1138ER, 1571N, 1991ER, 2493R

Video draw poker, 266R, 439R

### Motor Vehicles, Office of

Compulsory insurance, 1886N

License plates, types of, 1400N

### Pardons, Board of

Board meetings, 1879N

Sentence, pardon or commutation of, 1879N

### Private Investigator Examiners, Board of

Committees, 675N, 1303R

### State Police, Office of

DNA samples, 270R

Driver's license, 2189N

Motor carrier safety, 447R

### Safety Enforcement Section

Motor vehicle inspection, 1903N, 2190N, 2493R

## REVENUE AND TAXATION

### Alcohol and Tobacco Control, Office of

Responsible Vendor Program, 2191N

Self-service checkout, 1992ER

### Policy Services Division

Athletic teams withholding, 90R

Books of corporation, 157N, 804R

Cleaning services, 677N, 1305R

Collection, 2196N

Corporation franchise tax, 448R, 2375N

Corporation income tax, 470R, 2199N

Drivers' licenses, 1571N, 2330R

Electronic funds transfer, 2559N

Fees, 329N, 1044R

Hunting/Fishing licenses, 331N, 1045R

Lien issuance and cancellation, 329N, 1044R

Manufactured and mobile home settlement fund,  
330N, 1045R

Natural gas severance tax rate, 961P

Net operating loss deduction, 1904N, 2494R

Returns and payment, 2202N

Sales/Use tax

Collector's authority

to determine tax, 2372N

to examine records, 2374N

Dealers required to keep records, 2376N

Exclusion machinery, 1438ER, 1905N

Failure to pay tax

grounds for attachment, 2378N

rule to cease business, 2380N

Nonresident contractors, 2386N

Sales returned to dealer; credit or refund of tax,  
2391N

Sales tax refund for loss by natural disaster, 2393N

Termination or transfer of a business, 2397N

Wholesalers/Jobbers recordkeeping, 2398N

## **REVENUE AND TAXATION (continued)**

Exemptions, 1907N  
Admissions to entertainment, 2371N  
Exemptions from lease or rental tax, helicopters,  
2377N  
Little theatre tickets, 2381N  
Mardi Gras specialty items, 2382N  
Motion picture film rental, 2383N  
Nonprofit organizations, 2374N  
Pesticides used for agricultural purposes, 2387N  
Property purchased outside the state, 2388N  
Property used in interstate commerce, 2390N  
Seeds used in planting crops, 2394N  
Tickets to musical performances, 2396N  
Ships/ship supplies, 327N, 1044R  
Tax  
Imposition of, 2200N  
Treatment of by dealer, 2204N  
Uniform state/local sales tax definitions, 1911N,  
2196N, 2200N, 2202N, 2204N

### **Tax Commission**

Ad valorem taxation, 487R  
Timber stumpage values, 356P

## **SOCIAL SERVICES**

### **Community Services, Office of**

Block grant intended use report, 705P  
Daycare  
Program, 972ER  
Reimbursement rates, 1916N  
Developmental/Socialization Program, 1440ER,  
2247ER, 2560N  
Louisiana(s)  
Child and family services plan and annual  
progress and services report, 370P  
Consolidated child and family services  
plan for 2005-2009, 1100P  
Emergency Shelter Grants Program 2004  
Anticipated funds availability, 369P  
Safe haven relinquishments, 915N, 1703R

### **Family Support, Office of**

CCAP  
Provider payment increase, 916N, 972ER, 1484R  
Child immunization, 191ER, 974ER, 2248ER, 2399N  
Eligibility, activity hours, payment, 2078R  
FITAP  
Time limits, 2249ER, 2400N  
Food Stamp Program  
Alien time limitations, 19ER, 493R  
Reporting requirements, 191ER, 919N,  
74ER, 1486R  
KCSP  
Time limits, 2249ER, 2400N  
STEP Program, 19ER, 493R, 2249ER, 2400N

### TANF

Adoptions, amendments/ repeals, 2561N  
Caseload reduction report, 371P  
Developmental/Socialization Program, 1441ER,  
2566N  
Effort funds, maintenance of, 1992ER  
Initiatives, 192ER, 500R, 2251ER, 2253ER

### **Licensing, Bureau of**

Adult residential care facility, 92R  
Agency Profile, 2401N  
Licensing applications, 962P  
Transitional living, 92R

### **Rehabilitation Services, Office of**

Vocational Rehabilitation Services  
Financial information/transition planning, 921N,  
1487R

## **TRANSPORTATION AND DEVELOPMENT**

### **Highways/Engineering, Office of**

Debarment hearings, 678N, 1488R  
Design standards, 805R, 2331R  
Outdoor advertising, 2569N  
Control of, 2567N  
Pipe bursting/crushing, 2207N  
Traffic impact, 2402N  
Vegetation visibility permits, 2205N  
Wireless telecommunications permit, 272R

### **Professional Engineers and Land Surveyors**

Engineers/land surveyors, 923N, 1704R

### **Sabine River Compact Administration**

Meeting notice, 1101P, 2216P

### **Weights and Measures, Office of**

Critical off-road equipment permit, 1093N, 2079R  
Escort requirements, 680N, 1490R  
Worksite materials standards, 502R

## **TREASURY**

### **Louisiana State Employees' Retirement System**

Deferred Retirement Option Plan (DROP)  
Disbursements, 1402N, 2079R  
Self-directed plan, 27ER, 681N, 734ER, 1306R  
Emergency refunds, 2254ER, 2405N

### **Parochial Employees Retirement System**

Definitions/eligibility/scope of benefits, 736ER,  
952N, 1491R  
IRC provisions, 508R, 1046R

### **State Bond Commission**

Costs of issuance/reporting requirements, 953N,  
1490R

### **Teachers' Retirement System**

DROP account management, 100R  
Earnable compensation, 273R

## WILDLIFE AND FISHERIES

### Fisheries, Office of

Fishing closure  
Iatt Lake, 1139ER, 1443ER, 2442ER  
Saline Lake, 1139ER, 1443ER, 2442ER

### Wildlife and Fisheries Commission

Abandoned crab traps, removal, 101R, 2210N  
Alligator, 1402N, 1612ER, 1921N, 2338R  
Alligator snapping turtles, 1573N, 2495R  
Black bass daily take/size, 1403N, 2339R, 2495R  
Crappie daily take, 1404N, 2339R  
Cypress Lake/Black Bayou netting prohibition,  
954N, 1733R  
Deer, 1574N, 1613ER, 2495R  
Exotic fish, 2571N  
Fur harvest, 1442ER  
Grouper, deep water, 1610ER  
Hunting season  
closure, 2442ER  
re-opening, 2442ER  
King mackerel, 29ER, 2441ER

Migratory bird, 1610ER  
Nuisance wildlife control, 1094N, 2080R  
Oyster, 1611ER  
Lake Borgne, 31ER, 158N, 739ER  
Seed ground addition, 739ER, 1733R  
Red snapper, 29ER, 30ER, 1994ER  
Resident game hunting, 697N, 1493R  
Sharks/Sawfishes, 393ER, 699N, 741ER, 1507R,  
1995ER  
Shrimp, 32ER, 740ER, 976ER, 1441ER, 1442ER,  
1611ER  
Fall  
Zones 1 and 3, 1611ER  
Zone 2, 1611ER  
Spanish Lake game/fishing preserve, 955N, 1734R  
Spotted seatrout season, 159N, 706P, 741ER,  
1140ER, 1509R, 1577N, 2498R  
Turkey, 1917N  
Waterfowl, 1994ER  
WMA hunting, 684N, 1495R